

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

FLORIDA

v.

ROBERT KRAFT,

Defendant.

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Case Nos. 2019MM002346AXXXNB  
2019MM002348AXXXNB

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS

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Defendant Robert Kraft ("Mr. Kraft") respectfully submits this Memorandum of Law in Support of his Motion to Suppress ("Motion") that was filed on March 28, 2019, pursuant to Florida Rule of Criminal Procedure 3.190(g)(1)(B), (D), and (E).

### **PRELIMINARY STATEMENT**

Through the Motion, Mr. Kraft respectfully seeks to suppress video recordings that are the fruits of an unlawful "sneak and peek" search warrant ("Warrant") that the Town of Jupiter Police Department ("JPD") used to spy on Mr. Kraft and others, while they were in the private rooms of a licensed spa. He also seeks, relatedly, to suppress the fruits of an unlawful administrative search and an unlawful traffic stop.

Although the legal defects that infect the recordings are numerous and varied, the governmental overreach that unites them is singular and striking: the JPD resorted to the most drastic, invasive, indiscriminate spying conceivable by law enforcement—taking continuous video recordings of private massages in which customers would be stripping naked as a matter of course—in order to prosecute what are at most (according to Florida's own allegations) misdemeanor offenses, as to which (according to Florida's own affidavits and search warrants) a wide array of alternative, benign modes of proof was readily available. Far from having justification commensurate with the extraordinary invasions it perpetrated, law enforcement in this case had no authority whatsoever for something as drastic as "sneak and peek" video surveillance, much less continuous, unbounded video surveillance of naked patrons in private licensed massage parlors. Indeed, law enforcement had no basis to suspect anything more than a run-of-the-mill misdemeanor that has never been understood, in any corner of the United States, to warrant the eye-popping invasions that occurred here. Because we do not live in a police state and our government answers to the rule of law, suppression of the illegally-obtained evidence is the correct and essential remedy.

The Fourth Amendment to the U.S. Constitution, as well as Florida law, set clear, inviolable limits on how far law enforcement can go and under what circumstances. Those limits were flouted in this case, thereby putting the JPD on the wrong side of settled law. Because the operative Warrant and affidavit do not, by any reading, establish colorable authorization for the search and fruits at issue, this Court can and should order suppression as a matter of law without resort to any evidentiary hearing.

Law enforcement had no plausible justification for going to the extreme, invasive lengths it did just to investigate suspicion of mere solicitation. Tellingly, we can find nothing in Florida's law that authorizes law enforcement to conduct covert video surveillance inside private premises to investigate prostitution, let alone misdemeanor solicitation. Notably, in seeking and obtaining the Warrant, the JPD did not even purport to identify any authorization under Florida law. Instead, the JPD resorted to borrowing, by *analogy*, from *federal* law as putative basis for its Warrant. In doing so, the JPD only highlighted the illegality of the search it proceeded to undertake: Whereas the JPD also cited Title III and the limited authorization therein for federal *audio* surveillance, Florida's Legislature, in 2000, specifically removed *prostitution* from the enumerated crimes eligible for such surveillance. *See* Law Enforcement Communications—Review Panel—Radio System Implementation, 2000 Fla. Sess. Law Serv. Ch. 2000-369 (S.B. 2252). Moreover, courts nationwide have enforced Title III strictures for audio surveillance that, if anything, apply with even greater force to covert video surveillance and were not remotely abided by here. As for the Patriot Act's limited authorization of delayed-notice warrants, that federal authorization has no conceivable application to the instant state investigation of alleged misdemeanor solicitation. Unsurprisingly, the Warrant in no way suggested, much less found,



there was basis for invoking the Patriot Act's provisions (the most drastic medicine available to law enforcement) on the mundane facts present here.

Even setting aside the absence of any colorable authorization, what law enforcement did in this case defied established Fourth Amendment limits on video surveillance—a mode of surveillance that courts consistently recognize is especially problematic and invasive from a constitutional perspective, particularly as compared to audio recordings. For the same reason law enforcement could not satisfy Title III for purposes of audio surveillance, it follows *a fortiori* they could not justify *still more invasive and disfavored* covert video surveillance. Similarly, the fact that Florida's Legislature has expressly limited resort to *audio* recording, a less intrusive search, to enumerated crimes that do *not* include prostitution, should confirm that the JPD's resort to video surveillance for this investigation was categorically out of bounds. Further still, law enforcement could not establish requisite necessity under the Fourth Amendment because its NSA-style surveillance campaign was, in fact, wholly unnecessary. Nor did law enforcement even make a conscientious effort to minimize its intrusions, as constitutionally required, relative to any patina of necessity.

If the illegality of the search were not apparent as a matter of law (and we respectfully submit that it should be readily apparent), then an evidentiary hearing would be appropriate to inform this Court's assessment. Mr. Kraft is prepared to prove, should it become necessary, that the only claimed bases for the search Warrant—as deficient as they are on their face—were manufactured by law enforcement (presumably in conscious recognition that they lacked adequate grounds for going as far as they did), contrary to demonstrable facts. Not only does the underlying affidavit misrepresent material facts, but it reveals that law enforcement enlisted a health inspector to search the spa for evidence of a crime, in an end run around the Fourth

Amendment's warrant requirement. Such a maneuver has long been and remains taboo under settled constitutional law. Last, law enforcement failed to abide by even the most rudimentary safeguards spelled out by the Warrant. It also made a traffic stop for the sole purpose of identifying Mr. Kraft—a passenger in the car—in the absence of any traffic violation or reasonable suspicion of one by the driver.

In sum, the worst offenses that jump out from this record are not those committed by one or another masseuse or spa patron whose massage allegedly included consensual sexual acts. Far more worrisome than any alleged misdemeanor are the astonishing lengths to which law enforcement went in order to orchestrate a calculated, systematic campaign to blow past established constitutional limits. For the reasons discussed more fully below, the offending fruits should be suppressed because they were obtained in flagrant violation of the laws of Florida and of the United States.

### **BACKGROUND**

#### **A. The JPD Launches A Prostitution Investigation**

Starting October 2018, the JPD launched an investigation into possible prostitution. *See* Ex. A (Probable Cause Affidavit of JPD Det. Andrew Sharp, Jan. 15, 2019 (“Aff.” or “Affidavit”)) at 2. That investigation was led by Detective Andrew Sharp (“Sharp”) and prompted by information the JPD obtained from the Martin County Sheriff’s Office, which had launched a similar investigation months earlier. Whereas the Martin County investigation focused on alleged human trafficking and money laundering, however, the JPD’s investigation was focused solely on prostitution allegedly occurring at Asian massage parlors in strip malls (not human trafficking).

Sharp quickly identified Orchids of Asia (the “Spa”) as a subject of the JPD’s investigation based, in part, on online posts linking it to “rub and tugs,” *i.e.*, paid massages that

culminate with the manual manipulation of the male genitals until climax. *Id.* at 2–4. From there, Sharp launched a visual surveillance operation of the exterior of the Spa beginning on November 6, 2018. *Id.* at 5. That day, Sharp claims to have surveilled the Spa’s exterior for over seven hours and to have observed only male clients entering and leaving the premises, notwithstanding the fact that the Spa advertises for female spa treatments. *Id.* Until November 14, 2018, Sharp claims the JPD conducted 24-hour video surveillance of the exterior of the Spa, which supposedly revealed only male patrons entering and leaving. *Id.*

**B. The JPD Orchestrates A Pretextual Administrative Search Of The Spa**

When his suspicion grew that the Spa was, in fact, involved in prostitution, Sharp tapped Karen Herzog (“Herzog”), an investigator from the Florida Department of Health, as law enforcement’s agent and had her search the Spa in what he claims was a “routine inspection.” *Id.* Thus, on November 14, 2018, Herzog entered the Spa, without a warrant, under the guise of a routine administrative health inspection. *Id.* But her supposedly routine health inspection was no such thing; rather, Herzog’s search was part-and-parcel of Sharp’s weeks-long prostitution investigation and undertaken specifically to further the criminal investigation. Lest there be any doubt, Sharp, along with two other detectives, coordinated with Herzog and assembled outside of the premises, guarding the front and rear exits, while Herzog searched the Spa. *Id.*

Following Herzog’s “inspection,” she completed a report, listing the names of five employees and confirming that the Spa was fully licensed and operating in compliance with applicable regulations. *See* Ex. B (Rpt. of K. Herzog, St. of Fl. Dep’t. of Health Invs. Servs., dated Nov. 14, 2018 (“Herzog Report”). Although the report has a section for “remarks,” Herzog provided none. *See id.* at 2. Although the report has a query specifically asking whether “this establishment is being used as a principle [sic] domicile,” Herzog’s only response was “N/A,” *i.e.*, “not applicable.” *Id.* Herzog signed the report and affirmed that the information she

provided was “true and correct.” *Id.* In addition to her report, Herzog also took a picture of one of the employees’ identification card as well as a picture of the interior of the Spa, including one of an open refrigerator and one of an open freezer. *See id.* at 3–5. At the conclusion of the inspection, one of the other detectives posted near the Spa’s exit observed a female employee disposing of a bag of trash. *See Ex. A (Aff.)* at 5.

**C. The JPD Confirms Alleged Prostitution Activity At The Spa**

Several hours after Herzog completed her warrantless search, Sharp and another detective pulled the Spa’s trash. *Id.* Among the items recovered were documents referencing “Lulu”—an apparent reference to a masseuse employed by the Spa whom Sharp saw referenced on rubmaps.com, an online forum dedicated to illicit massage parlors. *Id.* at 3, 6. Additionally, Sharp discovered wet napkins that, he claims, appeared to be covered in seminal fluid. *Id.* at 6. Sharp seized the napkins and had them tested by the JPD, which confirmed that the substance was semen. *Id.* Shortly thereafter, on November 19, 2018, Sharp and another detective conducted another pull of the Spa’s trash. *Id.* Again, Sharp recovered additional documents referencing “Lulu,” as well as wet napkins that later tested positive for semen. *Id.*

The JPD resumed its surveillance of the exterior of the Spa on January 10, 2019. *Id.* As part of those efforts, Sharp and other members of the JPD tailed four male customers leaving the Spa. *Id.* at 6–8. In each instance, the JPD conducted stops after each male customer supposedly committed a traffic violation. *Id.* During the ensuing traffic stops, each man purportedly admitted to having received “rub and tugs” from their masseuses. *Id.* They also supposedly described receiving towels or napkins from Spa employees with which to clean up after the massage ended. *Id.* Additionally, several of the men looked at photos shown by police and identified particular masseuses who allegedly provided sexual services. *Id.*

D. The JPD Obtains A “Sneak and Peek” Warrant Authorizing Video Monitoring Of The Spa Based On Misrepresentations And Material Omissions

On January 15, 2019, Sharp swore out an affidavit before the Honorable Judge Howard Coates of the Fifteenth Judicial Circuit in and for Palm Beach County, seeking authorization for a “sneak and peek” warrant that would permit the JPD secretly to install hidden cameras inside the Spa’s massage rooms and in its lobby. *See* Ex. A (Aff.). Judge Coates issued the Warrant that same day, authorizing this highly invasive, covert surveillance for a period of five days. *See* Ex. C (Search Warrant Authorizing the Monitoring and Recording of Visual, Non-Audio Conduct, Jan. 15, 2019). Critically, however, Sharp’s Affidavit contained a litany of material misstatements and omissions calculated to mislead Judge Coates into believing that the alleged low-level prostitution at the Spa was actually part of a much more serious and widespread crime: human trafficking. Sharp planted this seed at the outset of the Affidavit, claiming that, before the JPD began its investigation, “Detectives from the Martin County Sheriff’s Office advised they were working several cases of prostitution *and human trafficking* at Asian Massage Parlors in their county,” during which “information was gained that there was a similar business” in Jupiter—*i.e.*, the Spa. Ex. A (Aff.) at 2 (emphasis added).

The JPD’s allusions to human trafficking continued. Among other things, the Affidavit relies heavily on the purported findings from Herzog’s illegal search, which Sharp used to bolster his false narrative of human trafficking. For example, Sharp claims that Herzog observed clothing, medicine, and beds, which, according to Sharp, further supported his belief that the Spa was involved in human trafficking. But Herzog’s own report tells a different story. For one, the report specifically indicates that the Spa is *not* being used as a place of principal domicile. *See* Ex. B (Herzog Rpt.) at 2. Moreover, Herzog—despite having taken pictures of certain items inside the Spa, including the refrigerator and freezer—included *no pictures* of the clothing,

medicine, and beds she supposedly (according to Sharp) flagged for him, even though such items would have been far more indicative of people living at the Spa (and thus of attendant health-code violations as well as possible human trafficking). It is difficult to fathom why Herzog would not have included photographs of the clothing, medicine, and beds had she, in fact, observed those items at the Spa. And it is all the more difficult to fathom why, in affirmatively reporting her observations, she would have omitted reference to any such items, disclaimed any evidence the Spa was being used as a “principle [sic] domicile,” and left blank the section for “Remarks,” all while (according to Sharp) she was supposedly harboring concerns about human trafficking. ). Separately, Sharp points to Herzog’s observation of a refrigerator “filled with food and condiments,” as “consistent with individuals living inside the Spa.” *Id.* at 5. Of course, that supposed “finding” is more consistent with the Spa’s employees bringing their meals to work, as millions of Americans do each day as part of their lawful employment.

Beyond its disquieting interplay with Herzog, the Affidavit contains misrepresentations and omissions on other important points. For example, the Affidavit fails to explain why other, less-intrusive means of surveillance would not have worked here. While Sharp concedes in the Affidavit that law enforcement regularly deploys undercover work to dismantle alleged prostitution enterprises, particularly as to illicit massage parlors, he fails to explain why such a tactic would not have worked in this particular case. Ex. A (Aff.) at 8. Nor could he supply any valid explanation, given that law enforcement *in this very County recently used undercover agents in a successful prostitution sting involving an Asian massage parlor*. See Ex. D (*Dept. of Health, Bd. of Massage Therapy v. Tang Long Life Therapy Massage*, Case No. 14-2551, Div. of Admin. Hr’g Tr. from Nov. 10, 2014) at 12:14–13:18; 62:11–23; 64:14–65:14; 118:4–125:14 (detailing undercover sting operation of Asian massage parlor in Palm Beach County). There

was simply no need for the invasive and—indeed, unlawful and unauthorized—“sneak and peek” warrant issued here. Further still, the Affidavit contains numerous other misrepresentations and omissions that Mr. Kraft plans to expose at an evidentiary hearing, if needed.

Unaware of the grave infirmities in the Affidavit (in part because of these misrepresentations), Judge Coates issued the Warrant on January 15, 2019.

**E. The JPD Installs Hidden Cameras Through A Fake Bomb Threat**

On January 18, 2019, the JPD caused a phony “suspicious package” warning to be issued for the Spa in order to force an evacuation, so the JPD could install hidden cameras inside several of its private massage rooms, as well as in the Spa’s lobby. This ruse concealed the execution of the Warrant from the Spa, its employees, and its customers, none of whom received notice of the issuance of the Warrant or the placement of hidden video cameras on Spa premises. Then, throughout the next five days, the JPD was authorized to use its hidden cameras to spy on the Spa’s customers while they were nude and receiving massages in a private room. As such, the Warrant authorized the JPD to videotape an untold number of unsuspecting, innocent, naked patrons who were doing nothing wrong. The JPD has since trumpeted the fact that, along the way, it recorded some instances of low-level sexual encounters between certain Spa clients and masseuses. But these recordings add nothing appreciable to the information the JPD had already developed from its prior surveillance and interviews of certain men exiting the Spa.

**F. The JPD Illegally Record Mr. Kraft And Illegally Stop His Vehicle**

Mr. Kraft visited the Spa on January 19, 2019 to visit a licensed massage therapist in a private room on private property. After leaving the Spa, Mr. Kraft entered the passenger side of his car, whereupon he was followed and pulled over by law enforcement, despite the fact that the driver of the car did not commit any traffic violations. During the unlawful traffic stop, Sharp requested (without any legal basis) that Mr. Kraft, as passenger, provide his driver’s license for

inspection. Mr. Kraft returned to the Spa on January 20, 2019. On February 19, 2019, about a month after its covert video surveillance operation concluded, law enforcement raided the Spa, executed several other search warrants (these, unlike the video surveillance inside the Spa, with notice as required by Florida law and the United States Constitution), and arrested its two managers. A few days later, the JPD filed misdemeanor charges against Mr. Kraft along with more than 20 other Spa customers, charging them with solicitation of prostitution.

**G. The JPD Misleads The Public About Its Low-Level Prostitution Investigation**

Shortly after charging Mr. Kraft and 24 other men with misdemeanor solicitation, the JPD went to the press to spin a yarn about how their investigation had supposedly targeted high-level human trafficking rather than low-level prostitution. For example, on February 22, 2019—the very day Mr. Kraft was charged—JPD Chief Daniel Kerr addressed the press for the first time regarding the investigation and opened his remarks by claiming, “Obviously our concern in this investigation center[s] around our, the possibility of victims of human-trafficking, the appearance, maybe, of that.” Ex. E (Tr. of JPD’s Feb. 22, 2019 Press Conf.) at 1. A few days later, Palm Beach County State Attorney David Aronberg amplified that falsehood, playing up the investigation’s fabricated connections to human trafficking. See Ex. F (Tr. of Palm Beach State Attorney’s Office Feb. 25, 2019 Press Conf.) at 1–2, 4–5.

These and other public statements made by the JPD, and Martin County police officials and state prosecutors regarding the investigation’s purported connection to human trafficking amounted to an attempt to deceive the public and justify law enforcement’s overreach in undertaking blanket, clandestine video surveillance. Tellingly, even today, over five months after this investigation began, six weeks after the Spa was raided by law enforcement, and more than five weeks after the JPD made statements describing the investigation as targeting human trafficking, *no human trafficking charges have been filed against anyone in connection with this*



case. Indeed, Florida law enforcement recently admitted, at last, that this is *not* a case involving human trafficking. See Mike Florio, NBC Sports, *Sheriff Admits There's Insufficient Proof of Human Trafficking In Florida Case*, Mar. 27, 2019, available at <https://www.msn.com/en-us/sports/nfl/sheriff-admits-theres-insufficient-proof-of-human-trafficking-in-florida-case/ar-BBVjBWu?li=BBnb7Kz&ocid=HPCDHP> (saying Martin County “turned it into a trafficking case” only to wind up “a little short to being able to prove that”). That law enforcement has since backed away from any fiction that this case involved human trafficking by no means excuses its earlier insinuations; it simply underlines the obvious problem here, which is that law enforcement used maximally-invasive, constitutionally-suspect surveillance in order to investigate what was really nothing more than a run-of-the-mill misdemeanor.

### **ARGUMENT**

For the reasons set forth in Parts I & II, the Warrant and search were necessarily invalid as a matter of law, such that all fruits (including the traffic stop that resulted from the JPD tailing the car in which Mr. Kraft was a passenger outside of the Spa) are due to be suppressed. This Court can and should so rule as a matter of settled law without occasioning evidentiary dispute or inquiry. Alternatively, to the extent the Court inquires further and probes behind the JPD's putative bases, the relevant searches will prove all the more unlawful for the reasons set forth in Parts III–VI. Accordingly, Mr. Kraft would respectfully request an evidentiary hearing to address these distinct factual issues in the event that the Court sees fit to reach them.

#### **I. “SNEAK AND PEEK” WARRANTS ARE NOT AUTHORIZED TO INVESTIGATE PROSTITUTION IN FLORIDA**

It bears emphasizing at the outset just how anomalous it is for law enforcement to search any private premises, in any fashion, pursuant to a warrant while withholding notice of same. By their very nature, such “delayed notice,” or “sneak and peek” warrants are constitutionally

problematic and reserved for extraordinary circumstances. *See United States v. Freitas*, 800 F.2d 1451, 1456 (9th Cir. 1986) (recognizing, in context of “sneak and peek” warrant, that “surreptitious searches and seizures of intangibles strike at the very heart of the interests protected by the Fourth Amendment” which “demands that surreptitious entries be closely circumscribed”); *see also Matter of United States*, 2017 WL 1208054, at \*5 (D. Kan. Mar. 31, 2017) (noting the “need for increased vigilance on the part of the judiciary” when confronting “sneak and peek” warrant applications).

It also bears emphasizing that §§ 943 and 934 of the Florida Statutes, which are the only authorizations cited in the Affidavit or Warrant, provide no authorization for a “sneak and peek” warrant to investigate mere prostitution, let alone misdemeanor solicitation. Section 943 does not authorize covert searching of any kind. At most, § 934.07 authorizes law enforcement to seek *audio wiretaps* in connection with criminal investigations pertaining to *certain specified* offenses. Critically, however, prostitution is *not* listed as one of the enumerated offenses for which a wiretap may issue. To the contrary, in 2000, § 934.07 was specifically amended to *remove* prostitution as an enumerated offense, reflecting the Florida Legislature’s express, considered judgment that wiretaps for criminal prostitution investigations are prohibited. *See* Law Enforcement Communications—Review Panel—Radio System Implementation, 2000 Fla. Sess. Law Serv. Ch. 2000-369 (S.B. 2252) (West) (deleting prostitution as an offense for which interception of communications may be authorized). What is more, even where audio surveillance is potentially in play, courts nationwide have enforced Title III strictures that, if anything, apply with even greater force to covert video surveillance and were not remotely abided by here, as elaborated below. *See infra* at II.A.

Even looking beyond § 934.07, undersigned counsel has been unable—despite extensive research—to find any statute or reported decision in Florida that affords any general, affirmative authorization under Florida state law for law enforcement to obtain a warrant while withholding notice of same. More specifically, use of a “sneak and peek” warrant to authorize clandestine video recording inside private premises seems to be virtually unheard of in Florida; we can find no reported decision that has ever confronted, much less upheld, any such warrant. The absence of any authorizing statute or precedent presumably explains why the JPD in its Affidavit did not so much as claim any authorization under Florida law, even while citing federal precedent applicable to federal law enforcement activities. *See* Ex. A (Aff.) at 9–10. The absence of authorization in Florida for any covert search such as this to investigate the crime in question should, by itself, be fatal to the Warrant’s validity. *See State v. Geiss*, 70 So. 3d 642, 649–50 (Fla. 5th DCA 2011) (prohibiting police from using search warrant to collect blood from DUI suspect, because “search warrants must strictly conform to the statutes and constitutional provisions which authorize their use” and, specifically when investigating misdemeanors, Florida law permits search warrants only for “property ... used as a means to commit” the relevant crime, as distinct from evidence of the crime (alteration in original)); *see also State v. Quintanilla*, 2018 WL 3326289, at \*13 (Fla. 11th Cir. Ct. July 06, 2018) (citing *Geiss* for rule that search warrants are confined to authorizing “search[es] for fruits or instrumentalities, but not for mere evidence, of crime” in the misdemeanor context).

Bereft of any authorization under Florida law, the JPD was forced to borrow from federal law that would not, by any plausible reading, even if adopted by Florida’s Legislature (which it has not been), authorize Florida’s law enforcement to do what it did. *See* Ex. A (Aff.) at 9–10. The JPD cited precedents under Title III that have authorized federal video surveillance under

well defined, carefully circumscribed circumstances. *See id.* (citing *United States v. Mesa-Rincon*, 911 F.2d 1433 (10th Cir. 1990); *United States v. Biasucci*, 786 F.2d 504, 510 (2d Cir. 1986); *United States v. Torres*, 751 F.2d 875, 876 (7th Cir. 1984); *United States v. Falls*, 34 F.3d 674, 676 (8th Cir. 1994)). In *all* of those cases, however, the underlying criminal activity that was surveilled involved felonies that were far more serious than the misdemeanor prostitution alleged to have taken place here, and the justification for the invasion was far stronger. *See Mesa-Rincon*, 911 F.2d at 1440 (counterfeiting United States currency); *Biasucci*, 786 F.2d at 517 (racketeering, extortion, and loansharking); *Torres*, 751 F.2d at 876 (terrorism/bomb making); *Falls*, 34 F.3d at 676 (cocaine drug trafficking).

Nor could the Patriot Act—even if it supplied authorization to Florida’s law enforcement, which it does not—supply the missing authorization for the Warrant in question. In supplying discrete authorization for certain delayed-notice warrants, the Patriot Act strictly limits that authorization. In particular, no such warrant can issue without satisfying statutory prerequisites that are expressly spelled out and pegged to demonstrated exigency, such as that posed by a suspected terrorist cell while it is under investigation. Specifically, § 3103a permits notice to be delayed in situations where “the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result,” which is defined to include “(A) endangering the life or physical safety of an individual; (B) flight from prosecution; (C) destruction of or tampering with evidence; (D) intimidation of potential witnesses; or (E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.” 18 U.S.C. § 3103a; 18 U.S.C. § 2705(a)(2). No one can pretend that the low-level solicitation suspected to be occurring at a licensed massage parlor—which the JPD had already successfully investigated through conventional means—posed an exigency in any of those respects, or, for that matter,

posed any threat akin to what the Patriot Act is designed to combat. Nor did the Affidavit claim any exigency. Nor did the Warrant purport to find any basis for invoking the Patriot Act. Nor could any such invocation pass muster. Notably, Sharp did not claim in his Affidavit that a “sneak and peek” warrant was needed to avoid an “adverse result” (18 U.S.C. § 3103a), insomuch as *notice* of the Warrant to the occupants of the Spa would have jeopardized his investigation; rather, Sharp merely asserts (without meaningful explanation) that other, less-intrusive investigative techniques would have been unsuccessful. *See* Ex. A (Aff.) at 11. Thus, to the extent the JPD’s “sneak and peek” Warrant was pursued based on perceived authority under the Patriot Act (and there is no indication it was or that such authority exists), such an attempt would be doomed.

It follows that the JPD’s “sneak and peek” video surveillance could *never* have been authorized under analogous federal provisions, *even if* Florida had adopted them as its own, which it most assuredly *has not*. By all indications, therefore, the search at issue went beyond the pale of any authority or analogy law enforcement might grasp to invoke. Put plainly, there was no legal authority—under state or federal law—for the extraordinarily intrusive “sneak and peek” Warrant requested and issued here.

## **II. THE COVERT VIDEO SURVEILLANCE VIOLATED THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION AS WELL AS THE FLORIDA CONSTITUTION**

As discussed above, the Warrant was unlawful as a matter of law, and we respectfully submit that the Court should invalidate the Warrant on its face. To the extent the JPD might nonetheless claim some colorable, affirmative authorization for its surreptitious video surveillance, however, it could not possibly overcome established constitutional prohibitions, particularly those of the Fourth Amendment. Courts recognize that “covert video surveillance is a severe intrusion into a person’s privacy expectations, which ‘provokes an immediate negative

visceral reaction’ and ‘raises the specter of the Orwellian state.’” *United States v. Anderson-Bagshaw*, 509 F. App’x 396, 421 (6<sup>th</sup> Cir. 2012) (quoting *United States v. Cuevas-Sanchez*, 821 F.2d 248, 251 (5<sup>th</sup> Cir. 1987)). The “basic principle articulated” by courts confronting covert video surveillance is that this tool “is highly intrusive and *justifiable only in rare circumstances*.” *Bernhard v. City of Ontario*, 270 F. App’x 518, 520 (9<sup>th</sup> Cir. 2008) (emphasis added). Accordingly, in order “to conduct lawful video surveillance, for Fourth Amendment purposes, the government armed with probable cause must also satisfy the requirements of Title III for analogous audio surveillance.” *United States v. Batiste*, 2007 WL 2412837, at \*7–8 (S.D. Fla. Aug. 21, 2007).

The established constitutional prerequisites for covert video surveillance are: “(1) the judge issuing the warrant must find that ‘normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; (2) the warrant must contain ‘a particular description of the type of [activity] sought to be [videotaped] and a statement of the particular offense to which it relates’; (3) the warrant must not allow the period of [surveillance] to be ‘longer than is necessary to achieve the objective of the authorization, [ ] or in any event longer than thirty days’ (though extensions are possible); and (4) the warrant must require that the [surveillance] ‘be conducted in such a way as to minimize the [videotaping] of [activity] not otherwise subject to [surveillance].” *Batiste*, 2007 WL 2412837, at \*7–8 (alterations in original) (citations omitted) (quoting *United States v. Falls*, 34

F.3d 674, 680 (8th Cir. 1994)). As elaborated below, the Warrant clearly flunks the first and fourth requirement for covert video surveillance, requiring necessity and minimization.<sup>1</sup>

Relatedly, for the same reasons that the Warrant fails to pass muster under the Fourth Amendment of the United States Constitution, it also fails to meet the requirements of Article I, Section 12 of the Florida Constitution. *See* Art. I, § 12, Fla. Const. (“This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court.”). If anything, this Court is free to “provid[e] [Florida’s] citizens with a higher standard of protection from government intrusion.” *Jardines v. State*, 73 So. 3d 34, 59 (Fla. 2011), *aff’d sub nom. Fla. v. Jardines*, 569 U.S. 1 (2013).

**A. The Warrant Fails To Satisfy The Necessity Requirement**

Requisite necessity cannot be established unless and until “normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.” *Batiste*, 2007 WL 2412837, at \*7 (quoting *United States v. Falls*, 34 F.3d 674, 680 (8th Cir. 1994)). “The showing of necessity needed to justify the use of video surveillance is *higher* than the showing needed to justify other search and seizure methods, including bugging.” *Mesa-Rincon*, 911 F.2d at 1442 (emphasis added). “The use of a video camera is an extraordinarily intrusive method of searching.” *Id.* The Warrant, with all due respect, does not come close to clearing the high bar set by the U.S. Constitution.

*First*, the Warrant fails to establish why other, less-intrusive forms of surveillance were not exhausted first. *See Mesa-Rincon*, 911 F.2d at 1444 (“[W]e require the government to prove exhaustion—either by attempt or explanation of why the method would not work—of all

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<sup>1</sup> While Mr. Kraft discusses only necessity and minimization at length herein, his challenge is based on all grounds under the Fourth Amendment and on the failure of the government to meet its burden as to any of the Title III factors.

‘reasonable’ investigatory methods.”). This “exhaustion” requirement is intended “to ensure that [such invasive surveillance] is not resorted to in situations in which traditional investigative techniques would suffice to expose the crime.” *United States v. Collins*, 300 F. App’x 663, 666 (11th Cir. 2008). Courts “will find authorization of video surveillance improper . . . when the government fails to attempt or explain its failure to attempt *all* reasonable alternative investigatory techniques.” *Mesa-Rincon*, 911 F.2d at 1444 (emphasis in original). No satisfying explanation is discernible for why law enforcement failed to exhaust less-invasive investigatory techniques. Among other things, they did *no* undercover work; issued *none* of the traditional pen-traps or subpoenas that logically precede a wiretap (let alone video surveillance); and *never* attempted to speak with *any* of the Spa’s employees or former employees to gather intelligence. There can be no serious claim of necessity on these facts.

It is especially concerning that the JPD forwent *any* undercover work during their investigation. Sharp claims in his Affidavit that undercover work was not possible here because of supposed safety and ethical concerns. *See* Ex. A (Aff.) at 8–9. But his claimed concerns blink the reality well known to law enforcement: law enforcement around the country routinely and successfully use undercover officers to infiltrate prostitution rings at massage parlors.<sup>2</sup> As noted, law enforcement *in this very County recently used undercover agents in a successful*

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<sup>2</sup> *See, e.g., State v. Regalada*, 2017 WL 4247043, at \*1 (N.J. App. Div. Sept. 26, 2017) (concerning conviction for prostitution under New Jersey law, which “stemmed from an undercover investigation” into a “massage parlor,” involving multiple officers posing as johns); *State v. Tu Nam Song*, 748 P.2d 273, 274 (Wash. 1988) (describing massage parlor owner who “agree[d] on two separate occasions to hire, for purposes of prostitution, undercover police officers posing as prostitutes”); *People v. Mei Xuan*, 2011 WL 1515058, \*1 (N.Y. Suffolk Cty. Apr. 18, 2011) (concerning prosecution case under New York law, which stemmed from an “undercover officer” in a “massage parlor,” whose masseuse “offered to manipulate the officer’s genital area”); *Jun Xiang Zhang v. State*, 2010 WL 2220603, at \*1 (Tex. Ct. App. June 3, 2010) (concerning conviction for prostitution under Texas law, which stemmed from “undercover” officers entering the “Golden Times Spa” and soliciting manual genital stimulation).



*prostitution sting involving an Asian massage parlor.* See Ex. G. Worse still, Sharp's Affidavit specifically confirms and recognizes that law enforcement regularly uses undercovers to investigate prostitution. See Ex. A (Aff.) at 8 (stating that "[m]any times in investigations involving massage parlors law enforcement agencies will employ the use undercover officers"). Despite this acknowledgement, Sharp provides no good reason why the JPD could not have successfully employed these same proven undercover techniques here. Its failure to attempt traditional undercover work should be fatal to the Warrant. Indeed, any other result could be taken by law enforcement as a virtual blank check to skip past tried-and-true investigative techniques and straight to the most extreme surveillance in every case.

*Second*, the extremely private location where the covert video surveillance occurred raises the necessity bar still higher. See *Mesa-Rincon*, 911 F.2d at 1443 (recognizing that "[a]nother element of the intrusiveness equation that affects the government's required showing of necessity is the nature of the premises to be put under surveillance"). The more private the surveilled setting, the greater the government's burden to show necessity. See *id.* (stating that the "government had a high burden to meet in showing the necessity of video surveillance" when the surveilled party had "medium" expectation of privacy). Here, a customer—disrobing in a closed private room within a licensed, private spa—has a complete expectation of privacy during a massage. See, e.g., *LaPorte v. State*, 512 So. 2d 984, 986 (Fla. 2d DCA 1987) (recognizing that models had expectation of privacy while in room where they disrobed); *U.S. v. Nerber*, 222 F.3d 597, 604–05 (9th Cir. 2000) (visitor in hotel room rented by another had reasonable expectation of privacy after that person left the room); *Boseovski v. McCloud Healthcare Clinic, Inc.*, 2017 WL 2721997, at \*3 (E.D. Cal. June 23, 2017) (recognizing privacy interests in medical provider's treatment room); *Crosby v. State*, 750 S.W.2d 768, 771 (Tex. Crim. App.

1987) (recognizing privacy interests in dressing room). Given the high expectation of privacy in this setting, the JPD must do more than it otherwise would to show necessity—yet it made no meaningful attempt in the Affidavit to show any real necessity. *See Torres*, 751 F.2d at 878 (recognizing that “secretly televising people . . . while they are in what they think is a private place is an even greater intrusion on privacy than secretly recording their conversations”).

*Third*, by the JPD’s own account, it already had sufficient evidence to establish probable cause in support of their investigation when it applied for the Warrant. Specifically, several days before applying for the Warrant, the JPD conducted no less than four pretextual traffic stops involving suspected men leaving the Spa. According to Sharp’s Affidavit, each of these men who were stopped supposedly confessed to paying for sex acts and even affirmatively identified the masseuses who supposedly performed the sex acts, as well as how much they paid for these acts. Beyond that, the JPD had already obtained positive semen tests on items found in the Spa’s trash. To the extent that account is credited (as it was in issuing the Warrant), it follows inexorably that law enforcement did not *need* to resort to secret, indiscriminate, continuous videotaping of private massage parlors just to build a solicitation case around low-level, consensual sex acts. *See Geiss*, 70 So. 3d at 649, 650 (Florida law permits search warrants only for “property . . . used as a means to commit” the relevant crime, when investigating misdemeanors); *see also Quintanilla*, 2018 WL 3326289, at \*13 (citing *Geiss* for rule that search warrants are confined to authorizing “search[es] for fruits or instrumentalities, but not for mere evidence, of crime” in the misdemeanor context).

*Fourth*, covert video surveillance is categorically unavailable to investigate prostitution in Florida. “Secret videotaping should be reserved for those *extreme and rare circumstances involving serious transgressions* where it is highly improbable that less odious techniques will

be effective.” *Richards v. Cty. of Los Angeles*, 775 F. Supp. 2d 1176, 1184 (C.D. Cal. 2011) (emphasis added); see *Batiste*, 2007 WL 2412837, at \*7 (“[V]ideo surveillance [can] not constitutionally be conducted . . . for anything but *the most serious offenses*, deserving of special extraordinary methods that are narrowly tailed [sic] to achieve the compelling government interest involved” (emphasis added)); see also *Bernhard*, 270 F. App’x at 520 (the “basic principle articulated” in every case addressing covert video surveillance is that this tool “is highly intrusive and *justifiable only in rare circumstances*” (emphasis added)). Here, the low-level prostitution crimes being investigated by the JPD were, most assuredly, *not* among “the most serious offenses” under Florida law. As already noted, Florida law permits *audio* wiretapping (a far less invasive technique than that at issue here) only for certain enumerated offenses that entail requisite severity. See Fla. Stat. § 934.07 (listing offenses subject to wiretapping, including “murder, kidnapping” and their ilk). Sharp, in his Affidavit, effectively concedes that his investigation cannot meet the standards for obtaining a wiretap because prostitution is *not* among the qualifying offenses for that highly intrusive search. See Ex. A (Aff.) at 9–10. Despite that tacit concession, Sharp somehow casually relies on the standards for obtaining a wiretap (which he was precluded from obtaining) in attempting to justify his request for an even *more* intrusive search warrant for covert video surveillance which lacks any legal authorization under Florida statutes or case law (impliedly acknowledged by the absence of any citation to supporting law in the Affidavit). In these circumstances, Sharp has not come close to satisfying the basic requirement of necessity under the exacting standards for obtaining a wiretap.

For the same reasons the necessity requirement was not established, the resulting fruits are due to be suppressed, as courts have repeatedly held. See, e.g., *Davis v. State*, 529 So. 2d

732, 733 (Fla. 4th Dist. Ct. App. 1988) (suppression of wiretap evidence required where “affidavit presented to secure the wiretap authorization, by virtue of its numerous omissions and misrepresentations, was unsupported by probable cause” and court found “other statutory violations by the police, including inadequate minimization and failure to utilize more extensive investigative techniques”); *United States v. Gonzalez, Inc.*, 412 F.3d 1102, 1109–11 (9th Cir. 2005) (suppression appropriate when affidavit that recklessly misrepresented and omitted information about necessity of wire-tap, past success of alternative methods, and potential for future confidential informant and undercover investigations); *United States v. Castillo-Garcia*, 117 F.3d 1179, 1194 (10th Cir. 1997).<sup>3</sup>

**B. The Warrant Fails To Satisfy The “Minimization” Requirement**

Setting aside the lack of necessity, the Warrant separately fails to satisfy the minimization requirement, which requires that “the [surveillance] ‘be conducted in such a way as to minimize the [videotaping] of [activity] not otherwise subject to [surveillance].’” *Batiste*, 2007 WL 2412837, at \*7–8 (alterations in original) (quoting *United States v. Falls*, 34 F.3d 674, 680 (8th Cir. 1994)). “The purpose of the minimization requirement is to avoid the recording of activity by persons with no connection to the crime under investigation who happen to enter an area covered by a camera.” *Mesa-Rincon*, 911 F.2d at 1441. Notably, this Warrant contained *no* instructions for the video monitors to guide them as to when to stop recording, instead authorizing them to record *everything* that occurred while the cameras were on. As a result, the

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<sup>3</sup> If the absence of necessity is not apparent enough as a matter of law, then a hearing would be warranted under *Franks v. Delaware*, 438 U.S. 154 (1978), particularly to the extent there is evidentiary dispute about whether Sharp misrepresented or omitted the availability of less drastic means of investigating. See *Antone v. State*, 382 So. 2d 1205, 1211 (Fla. 1980) (“[W]here a defendant makes a preliminary showing that a false statement made knowingly and intentionally or with reckless disregard for the truth was included by the affiant in the search warrant affidavit and the false statement was necessary to the finding of probable cause, an[ ] evidentiary hearing must be held.”); *Gonzalez*, 412 F.3d at 1110–01.

police were authorized to record lawful massages, including of spa customers who engaged in no sexual activity whatsoever, without any instruction that they cease recording if circumstances indicated no illegal activity was afoot. That is inimical to the Fourth Amendment and any regard for personal privacy.

The Warrant's only acknowledgment of minimization comes in the following paragraph:

[C]overt surveillance cameras will be placed only in locations where prostitution is believed to be occurring. In addition, the front lobby of the business will also be under surveillance as this is where the exchange of money is believed to be occurring. There will be no cameras installed in areas expected to be non-criminal in nature, i.e. kitchen, bathroom, personal bedrooms. Additionally, the view of the video monitor will be situated in the monitoring room such that the view is not observable by persons other than those persons monitoring the view in the proper performance of the monitor's official duty. The visual, non-audio surveillance will be monitored during the business's hours of operation . . . .

Ex. C at 3. Such a perfunctory nod to minimization by no means satisfies the Fourth Amendment. In authorizing continuous, blanket monitoring of the private massage rooms where patrons were *stripping* as a matter of course, the Warrant does *nothing* to protect innocent persons, potentially including female customers, engaged in perfectly lawful activities. It offers *no* guidelines for when law enforcement should stop monitoring or recording a naked patron who is simply getting a massage. To the contrary, the Warrant provides for *every* Spa client who enters a private massage room to be recorded for his or her entire session, period and full stop. Nor does the Warrant so much as specify a time when monitoring must come to a hard stop with the conclusion of business hours; the need for that outer limit was expressly acknowledged yet inexplicably ignored in the Warrant that issued. Finally, even the prescription for how "view of the video monitor will be situated" was *illusory*, to the extent law enforcement took the Warrant as authorizing not only monitoring but also *recording*, such that videos could then be viewed *offsite*, far outside the specified monitoring station and protocols. In sum, the Warrant relies on

an assumption that *all* conduct occurring in the massage rooms was likely criminal—an assumption unsupported by the facts alleged in the Affidavit and, for that matter, common sense.

In these remarkable circumstances, the absence of proper minimization procedures is palpable and dispositive. *See, e.g., In re Warrant to Search a Target Computer at Premises Unknown*, 958 F. Supp. 2d 753, 760 (S.D. Tex. 2013) (finding inadequate minimization where “Government has offered little more than vague assurances” and where “remote camera surveillance may well transmit images of persons not involved in the illegal activity under investigation”); *United States v. Simels*, 2009 WL 1924746, at \*15 n.10 (E.D.N.Y. July 2, 2009) (minimization requirement not met where “government’s written minimization instructions to the monitoring agents and the wall agents [were] virtually incoherent”), *aff’d*, 654 F.3d 161 (2d Cir. 2011); *United States v. Renzi*, 722 F. Supp. 2d 1100, 1128 (D. Ariz. 2010) (minimization requirement not met where law enforcement failed to provide adequate minimization instructions and guidance).

### **III. THE WARRANT RESTS ON MATERIAL MISREPRESENTATIONS AND OMISSIONS THAT RENDER IT INVALID AND UNLAWFUL**

A warrant is invalid if an issuing court relied on misrepresentations or omissions that were knowingly or recklessly made by the affiant. *See, e.g., Thorp v. State*, 777 So. 2d 385, 391–92 (Fla. 2000) (explaining that material false statements and material omissions can defeat a probable cause determination); *State v. Bogard*, 388 So. 2d 1296 (Fla. 4th DCA 1980) (*per curiam*) (warrant invalid where affidavit gave false impression that purported confidential informant had assisted police in the past); *United States v. Novaton*, 271 F.3d 968, 986–87 (11th Cir. 2001); *United States v. Brown*, 631 F.3d 638, 650 (3d Cir. 2011) (warrant invalid where “false averment had no basis in any of the materials with which [the affiant] had been presented”). This Warrant is invalid and unconstitutional because Sharp’s Affidavit contains

serial material misrepresentations and omissions underlying the issuing court's determination of probable cause. Absent Sharp's misrepresentations and omissions regarding the lack of alternative investigatory tools, the issuing judge would not have found sufficient necessity to issue this Warrant. At the very least, if the Warrant were not constitutionally defective in other respects, an evidentiary hearing would need to be held consistent with *Franks v. Delaware*, 438 U.S. 154 (1978).<sup>4</sup>

In particular, Sharp's Affidavit seems founded on a fiction—namely, that the JPD was investigating something as serious as “human trafficking” at the Spa. Ex. A (Aff.) at 2. Without seeking (or receiving) a probable cause finding regarding any human trafficking crimes under Florida law, Sharp nonetheless included several purported “facts” in his Affidavit to *suggest* such crimes were being committed at the Spa. Specifically, Sharp's Affidavit relies upon the findings from the supposedly “routine inspection” of the Spa conducted by Herzog, an inspector from Florida's Department of Health, who allegedly saw evidence of individuals living at the Spa. Ex. A (Aff.) at 5. Sharp made his reckless leap over to human trafficking based on supposed “evidence” consisting of such things as observing a refrigerator stocked with food, two beds, and clothing—all of which may be routinely observed at any number of places of employment, including law offices, for reasons having nothing to do with human trafficking. It strains credulity, however, to believe that Herzog would have observed such items and linked them to trafficking but somehow omitted those pictures from her report, choosing instead to

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<sup>4</sup> See *Antone*, 382 So. 2d at 1211 (“[W]here a defendant makes a preliminary showing that a false statement made knowingly and intentionally or with reckless disregard for the truth was included by the affiant in the search warrant affidavit and the false statement was necessary to the finding of probable cause, an[] evidentiary hearing must be held.”); see also *Gonzalez*, 412 F.3d at 1110–01 (holding *Franks* hearing to probe affiant's “misrepresentations and omissions related to the ability of customary investigative tools to produce the evidence sought by the government”).

include pictures of an open refrigerator and freezer. What is more, Sharp's insinuation is flatly contradicted by Herzog's own report, which provides contemporaneous, sworn attestation that she herself did *not* perceive the Spa to be serving as a place of domicile. *See* Ex. B (Herzog Rpt.) at 2. Although police officials have since backed away from the notion that this case involves human trafficking, there is every indication that the JPD earlier resorted to false innuendo in order to procure, via the Warrant, extraordinary authorization of the sort that no honest, sober recitation of the actual facts could justify.

There are other strong indicia that Sharp deliberately misrepresented critical points in his Affidavit. Mr. Kraft would respectfully propose to present his supporting evidence at a hearing. The material misstatements and omissions underlying the Warrant violate Mr. Kraft's constitutional rights, and afford yet another reason why the Warrant is invalid and its fruits should be suppressed. *See, e.g., Thorp*, 777 So. 2d at 391–92; *Bogard*, 388 So. 2d at 1296; *Novaton*, 271 F.3d at 986–87; *Brown*, 631 F.3d at 650.

#### IV. HERZOG'S WARRANTLESS SEARCH OF THE SPA WAS UNLAWFUL

Mr. Kraft also respectfully moves to suppress the fruits of the separate, illegal, warrantless search of the Spa that Herzog conducted. Searches "conducted without a warrant issued upon probable cause [are] per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions." *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (alteration in original). Among those exceptions are administrative searches. *See, e.g., New York v. Burger*, 482 U.S. 691, 702 (1987); *United States v. Biswell*, 406 U.S. 311, 315 (1972); *Bruce v. Beary*, 498 F.3d 1232, 1239 (11th Cir. 2007).

While administrative searches are a recognized exception to the traditional warrant requirement, "the government may not use an administrative inspection scheme to search for criminal violations." *Burger*, 482 U.S. at 724. That is, administrative searches "cannot be used



as a pretext for what is, in reality, a purely criminal investigation.” *Ruttenberg v. Jones*, 283 Fed. App’x 121, 133 (4th Cir. 2008) (citing *Burger*, 482 U.S. at 716 n.27); *see also Swint v. City of Wadley*, 51 F.3d 988, 998 (11th Cir. 1995) (“While legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment, pretextual administrative searches do . . . .” (citation omitted)). Accordingly, an administrative search “should be considered a pretext, and thus deemed impermissible, if the inspection was performed ‘solely to gather evidence of criminal activity.’” *Ruttenberg*, 283 Fed. App’x at 133 (citing *United States v. Johnson*, 994 F.2d 740, 742 (10th Cir. 1993); *Bruce v. Beary*, 498 F.3d 1232, 1239–40 (11th Cir. 2007); *City of Indianapolis v. Edmond*, 531 U.S. 32, 37–38 (2000) (indicating that a warrant is required if “the primary purpose [of the search] was to detect evidence of ordinary criminal wrongdoing”)). Precisely such resort to pretext is evident and admitted here, rendering Herzog’s inspection lawless and, indeed, indefensible.

Sharp’s affidavit effectively lays bare the constitutional violation. There, Sharp states that, in late October 2018, he initiated a prostitution investigation relating to the Spa. After weeks of research and covert surveillance, Sharp confirmed his suspicions that the Spa was, in fact, implicated in alleged prostitution. Absent a warrant, of course, Sharp was forbidden to search the Spa. So Sharp orchestrated an end run: he tapped Herzog as law enforcement’s agent and had *her* search the Spa for him in what he claims in his Affidavit was a “routine inspection.” In other words, Sharp directed Herzog to do what law enforcement could not in entering the Spa, *sans* warrant, to search for evidence of a crime, while three law-enforcement officers were stationed outside the Spa monitoring ingress and egress.

Binding, on-point precedent from the U.S. Supreme Court on down the line clearly prohibits such circumvention of the Fourth Amendment’s warrant requirement. *See Burger*, 482

U.S. at 724; *see also Ruttenberg*, 283 Fed. App'x at 133. It follows that Herzog's search of the Spa was, itself, invalid and its fruits illegal; the misleading portions of the Affidavit that rely upon Herzog's search (and the fruits derived therefrom) should be suppressed.<sup>5</sup>

**V. THE WARRANT WAS NOT COMPLIED WITH BY LAW ENFORCEMENT**

Even setting aside the constitutional flaws that render the Warrant invalid, it bears emphasizing that law enforcement failed to abide by the Warrant, even by its own terms. The Warrant had a 10-day return period, but the JPD did not comply. *See* Ex. C (Warrant) at 3. It also required that copies of the Subpoena be delivered to the Spa's owner, but they never were. *Id.* It is inexcusable for law enforcement to ignore the most rudimentary, express safeguards attending its spying campaign.

**VI. MR. KRAFT'S TRAFFIC STOP WAS UNLAWFUL**

Finally, the JPD further violated Mr. Kraft's rights by pulling him over on January 19, 2019 in the absence of reasonable suspicion. "To make a valid traffic stop, law enforcement must have a reasonable suspicion that a traffic violation has occurred." *Carter v. State*, 120 So. 3d 207, 209 (Fla. 5th DCA 2013). A traffic stop unsupported by reasonable suspicion is illegal, therefore, and any resulting evidence due to be suppressed. *See, e.g., id.* (reversing trial court, and holding that evidence from traffic stop without reasonable suspicion must be suppressed);

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<sup>5</sup> *See, e.g., United States v. Rahman*, 805 F.3d 822, 827 (7th Cir. 2015) (search of property not justified as administrative search to find origin and cause of fire, even with consent, because primary purpose was to conduct arson investigation); *Jacob v. Twp. of West Bloomfield*, 531 F.3d 385, 390 (6th Cir. 2008) (land ordinance enforcement officer's inspection of property not justified as administrative search because primary purpose was investigation of criminal violations); *United States v. Johnson*, 994 F.2d 740, 743 (10th Cir. 1993) (federal agent's search of taxidermy shop not justified as administrative search because administrative inspection was pretext for criminal investigation); *see also Abel v. United States*, 362 U.S. 217, 248 (1960) (Douglas, J., dissenting) (the government cannot evade the Fourth Amendment "by the simple device of wearing the masks of [administrative] officials while in fact they are preparing a case for criminal prosecution").

*Leslie v. State*, 108 So. 3d 722, 723 (Fla. 5th DCA 2013) (same). Here, the JPD had no genuine legal basis for a stop when it pulled over the car on January 19, 2019. The driver of the vehicle committed *no* traffic violations, and the officers had *no* reasonable suspicion that one had occurred. Accordingly, any evidence derived from that unlawful stop should also be suppressed. *See Brendlin v. California*, 551 U.S. 249, 259 (2007) (holding “that a passenger may bring a Fourth Amendment challenge to the legality of a traffic stop”); *see also State v. Thomas*, 2016 WL 1359412, at \*5 (Tex. App. Apr. 6, 2016) (affirming grant of motion to suppress where officers were surveilling man and made a pretextual stop of vehicle in which he was a passenger). The traffic stop was merely a rouse to identify the passenger in the car.

To the extent there is any evidentiary dispute on this point, the defense stands ready to contest the lawfulness of the stop at an evidentiary hearing.

#### CONCLUSION

For the reasons set forth above, the Court should grant the Motion and suppress all evidence derived from law enforcement’s illegal “sneak and peek” Warrant, Herzog’s illegal warrantless search, the JPD’s illegal traffic stop of Mr. Kraft. In the event the Court perceives a material evidentiary dispute, an evidentiary hearing should be held for purposes of deciding the relevant suppression issues.

*Respectfully Submitted,*

ATTERBURY, GOLDBERGER & WEISS, P.A.

By: /s/ Jack Goldberger

Jack Goldberger

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*Attorneys for Defendant Robert Kraft*

NOT A CERTIFIED COPY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of Court using the Florida Courts E-Filing Portal and served via E-Service upon the all counsel of record in this case, on this day, April 2, 2019.

By: /s/ Jack Goldberger

Jack Goldberger  
250 Australian Ave. South, Suite 1400  
West Palm Beach, FL 33401  
(561) 659-8300

# EXHIBIT A

NOT A CERTIFIED COPY

**AFFIDAVIT AND APPLICATION FOR SEARCH WARRANT  
AUTHORIZING THE MONITORING AND RECORDING  
OF VISUAL, NON-AUDIO CONDUCT**

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

THE STATE OF FLORIDA,  
COUNTY OF PALM BEACH

BEFORE ME, Honorable Judge, Howard Coates Circuit Court Judge in and for Palm Beach County,  
personally appeared this day

**Detective Andrew Sharp, Jupiter Police Department**

Who being by me first duly sworn, deposes and says that he believes and has good reason to believe that  
a certain premises located in Palm Beach County, Florida, described as follows, to wit:

The business located at:

**103 S. U.S. Highway 1, Suite C2, Jupiter, Florida, 33477, Jupiter Square Plaza.**

To reach the premises:

**Begin at the intersection of Indiantown Road and Military Trail. Travel east on Indiantown Road  
passed the intersection of Indiantown Road and U.S. Highway 1. Continue east on Indiantown Road  
and the plaza is the first entrance on the left of East Indiantown Road.**

The business is readily recognized by:

**The business is located on the far west side of the plaza and faces north. The exterior of the building  
is painted tan in color. The roof is green in color barrel tile. Suite C2 is a single story unit. A sign  
located in the front window of the business identifies the business and displays the words "Orchids  
of Asia Day Spa." There are also neon signs in the window with the words "Massage" and "Open".  
Two marked handicapped parking spaces are directly in front of the business. When facing the  
business, the front door is situated to the right of large multi-paned window. The front door is  
painted dark brown in color and is of apparent metal construction with large glass pane windows.  
The door is hinged on the right (west) and opens out (left to right).**

This is a complete description of the business desired to be searched, along with the curtilage thereof and  
to diligently search said location and any and all persons found therein, who are reasonably believed to be  
involved in the crime or crimes, being the premises occupied by or under the control of:

**Hua Zhang (A/F, 12/13/60).**

And there is now being kept on the above described (premises) certain:

**Evidence of, Prostitution in addition to fruits of, and instrumentalities of violation of the law(s) associated with Deriving Support from the Proceeds of Prostitution, specifically the Non-audio, video recordings of individuals engaged in acts related to these violations.**

which is being kept and used in violation of the laws of the State of Florida, to wit:

**Deriving Support from the Proceeds of Prostitution as enumerated under Florida State Statute 796.**

which is in violation of the laws of the State of Florida, as enumerated in Chapter(s) 796 of the Florida State Statutes.

That the facts establishing the grounds for this application and the probable cause for believing that such facts exist are as follows:

In late October of 2018, I initiated a prostitution investigation based on information received from Detectives with the Martin County Sheriff's Office. Detectives from the Martin County Sheriff's Office advised they were working several cases of prostitution and human trafficking at Asian Massage Parlors in their county. During the course of their investigation, information was gained that there was a similar business in the Town of Jupiter. The business in question was identified as Orchids of Asia Day Spa, located at 103 S. U.S. Highway 1, Suite C2 in the Jupiter Square Plaza.

Based on the information obtained, I began researching the business. The State of Florida Division of Corporations Records show the business registered as Orchids of Asia Day Spa Inc. and was filed and became active on February 15<sup>th</sup>, 2012. The registered agent name is listed as Hua Zhang with an address of the business, 103 S. U.S. Highway 1 #C2, Jupiter, FL, 33477. A query of the Department of Highway Safety and Motor Vehicles Driver and Vehicle Information Database identified Hua Zhang with a date of birth of December 13<sup>th</sup>, 1960. Hua Zhang's listed address of 15248 Evergreen Oak Loop, Winter Garden Florida, 34787.

A Google search using the name of the business, Orchids of Asia Day Spa, revealed several reviews of the business on various search engines. Those reviews indicated the business was a "rub and tug"; "rub and tug" is slang term which identifies a business as providing sexual services, specifically manually manipulating the male genitals until the point of climax. The website Rubmaps.com is a forum based website which allows customers, seemingly all male, to discuss their individual experiences at illicit massage parlors. Under the name Orchids of Asia Day Spa, several postings were located from February 2015 to March of 2018. The reviews for Orchids of Asia Day Spa provide the name, address, phone numbers and directions to the location. The postings detailed visits involving Asian females providing sexual acts, as well as massage/body rubs in exchange for payment. The majority of the posts advised the female employee would provide the male client with a "hand job"; "hand job" is a slang term for a sexual act involving the manual manipulation of the male genitals. Listed below are screen shots from rubmaps.com and various other forums describing the illicit nature of Orchids of Asia Day Spa:



Has anyone ever been to Amore in Palm Springs? Are they FRIENDLY?

Good Massage

RE Originally Posted by MAX357 [New Original Post]

Nice to know. I am always searching for a good massage. If it is good enough then I don't care about an ending. Problem is they are hard to find and even harder to find one that is not "hoisted" out.

Long time lurker here, and thought this was a good time finally contribute and chime in.

MAX357, agree with your comment on Lulu. I love the massage she gives and the HE is an awesome bonus. I've found another girl who works out of her apartment on Northlake who also gives an awesome massage, she's Thai, and like Lulu, that's all you get, but the massage is worth the money. Very pretty, very clean and very nice & quiet place. If you're looking for the same service Lulu offers, but in a setting outside of the spa, you'll like this young lady. I'm pretty sure she's younger than Lulu, and the price works out to be about the same as what I pay the house plus tip for Lulu. She advertises on two of the sites that I've had some luck finding a couple of my independent.

<https://www.braintreach.com/bw-309-rt/6403532>

Good luck,

AM

THANKS

RE Originally Posted by MAX357 [New Original Post]

I go to Orchids of Asia Day Spa in Jupiter and see Lu Lu (pronounced Lulu). Fantastic better than a therapist massage, but never more than a HE and relaxing under the big or over the chaise no matter what I have offered. She's very pretty. Accept no substitutes. I have actually gone to her for the massage, she did an after thought, I've been seeing her for three years and she still won't let me take a photo of her. Tried to get her to do an incall but I suppose it's a no no. I told her I pay several hundred for an incall but I think Muna-San keeps a tight rein.

THEOLDMAN

Nice to know, I am always searching for a good massage. If it is good enough then I don't care about an ending. Problem is they are hard to find and even harder to find one that is not "hoisted" out.

THANKS

RE Originally Posted by MAX357 [New Original Post]

I recommend Lulu spa. Don't expect to get pretty, young ones and don't expect to get everything for less than \$5 and you won't be disappointed. On the other hand, never had a good massage and I like knowing what to expect.

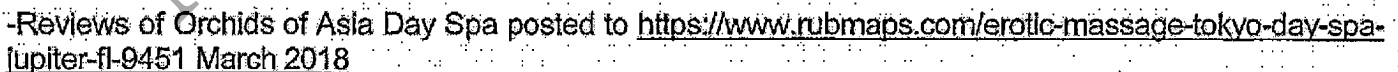
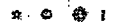
Is that with the entrance fee or not?

Haven't been by there in years.

Just wondering if I should go out of my way one day.

THANKS.

-Reviews of Orchids of Asia Day Spa posted to <http://www.usasexguide.nl/forum/showthread.php?7448-Massage-Parlor-Reports> on October 18<sup>th</sup> and October 23<sup>rd</sup>, 2018.



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week from 09:30am to 9:30pm. After being at the business for over 7hrs, I only observed male clients enter and exit the business, despite the listing advertising "Facials" and other services for female clients. From Tuesday, November 6<sup>th</sup>, 2018 to Wednesday, November 14<sup>th</sup>, 2018, covert video surveillance from the outside of the business was conducted 24hrs a day. Each day, the business opened at approximately 9am and did not close until approximately 10:30 or 11:30pm. Each client who entered the business was male and would stay of an average of 30-45 minutes. The Surveillance log for those days is as follows:

Surveillance began on Tuesday, November 6<sup>th</sup>, 2018 at 1500hrs to 2157hrs. During the surveillance period, approximately 7 males visited the business. All of the males stayed for a period of 30 to 60 minutes.

On Wednesday, November 7<sup>th</sup>, 2018, I conducted surveillance of the business from 0900hrs to 2300hrs. During the surveillance, approximately sixteen (16) males visited the business. All of the males stayed for a period of 30 to 60 minutes.

On Thursday, November 8<sup>th</sup>, 2018, I conducted surveillance at the business from 0900hrs to 2300hrs. During the surveillance period, approximately eighteen (18) males visited the business, including a golf cart party of eight (8) males. All of the males stayed for a period of 30 to 60 minutes.

On Friday, November 9<sup>th</sup>, 2018, I conducted surveillance at the business from 0900hrs to 2230hrs. During the surveillance period, approximately eighteen (18) males visited the business and stayed for a period of 30 to 60 minutes.

On Saturday, November 10<sup>th</sup>, 2018, I conducted surveillance at the business from 0900hrs to 2300hrs. During the surveillance period, approximately twenty (20) males visited the business and stayed for a period of 30 to 60 minutes.

On Sunday, November 11<sup>th</sup>, 2018, I conducted surveillance at the business from 0900hrs to 2200hrs. During the surveillance period, approximately thirteen (13) males visited the business and stayed for a period of 30 to 60 minutes.

On Monday, November 12<sup>th</sup>, 2018, I conducted surveillance at the business from 0900hrs to 2300hrs. During the surveillance period, approximately twelve (12) males visited the business and stayed for a period of 30 to 60 minutes.

After obtaining this information, I made contact with Florida Department of Health investigator Karen Herzog. I requested Herzog conduct a routine inspection on the business. On Wednesday, November 14<sup>th</sup>, 2018, Herzog conducted her inspection. Inside the business, Herzog advised there were three female employees present. Herzog took photographs of the employees Florida Driver's Licenses and Massage Therapy Licenses. The females were identified as the following: Lei Wang (A/F, 05/20/73), Hua Cao (A/F, 02/08/72) and Shen Mingbi (A/F, 07/19/60). Investigator Herzog took photographs of the inside of the business and advised it appeared as though the female employees were living there as there were two rooms with beds, including sheets and pillows. Next to the beds she located dressers which housed several personal items including medicines and clothing for the females. Inside the kitchen of the business, Herzog located a refrigerator filled with food and condiments, consistent with individuals living inside. While Herzog was inside of the business conducting her inspection, Detective Cook #404, Detective Jordan #405 and I were outside of the business to the front and rear in unmarked vehicles. At the conclusion of the inspection, Detective Jordan #405 advised an Asian female immediately exited the rear of the business and through away a small plastic bag into the trash dumpster located directly behind the business.

At approximately 2300hrs on the 14<sup>th</sup>, Detective Jordan and I conducted a trash pull on the business. Located inside of the dumpster to the business, I observed several white garbage bags. Based on my training and experience, it is known these types of Asian illicit massage business discard their trash inside small plastic grocery style bags. Next to several regular white garbage bags, I located a small white grocery style plastic bag. Inside of the white bag, I located two other small grey grocery style bags. Inside of the first grey grocery style bag, I located several pieces of white paper which had been ripped. I placed the pieces together which created a spreadsheet with several columns. The columns were titled Name, Service, Add Time, Amount, In, Out, Cash, Card, Cert./Pre-Paid, Card tip and other. Under the names column was the name Lulu. Lulu was listed on rubmaps.com as one of the provider's names for the illicit massage. Also located inside of the bag were several plastic napkins which were wet and appeared to be covered in seminal fluid. The items were secured and taken back to the Jupiter Police Department. On Thursday, November 15<sup>th</sup>, 2018, I requested Crime Scene Investigator McClendon conduct a presumptive test of the napkins recovered for the presence of seminal fluid. Investigator McClendon stated the napkins tested positive.

On Monday, November 19<sup>th</sup>, 2018, Agent Rhodes #343 and I conducted a second trash pull on the business. I located two small grocery style plastic bags inside the dumpster to the rear of the business. The first, a small tan grocery style plastic bag contained several credit card receipts with the name of the business printed on the top. Within the bag were several wet paper napkins which appeared to be covered in seminal fluid. The second bag, a gray in color small grocery style plastic bag contained several other wet paper napkins, along with ripped pieces of white paper. Handwritten on the paper was the following: "11:00 Lulu, 1hr, Dan" and in parenthesis the numbers 0878, believed to be the last four digits of a credit card number. The items were secured and taken back to the Jupiter Police Department. On Tuesday, November 20<sup>th</sup>, 2018, I requested Crime Scene Investigator McClendon conduct a presumptive test of the napkins recovered for the presence of seminal fluid. Investigator McClendon stated the napkins tested positive.

On Thursday, January 10<sup>th</sup>, 2019, surveillance was conducted at the business to monitor customer volume and traffic.

#### Surveillance Log:

1000hrs Surveillance began

1120hrs black Ford Escape with a New York tag pulls into the parking lot and parks near the business. W/M wearing a black windbreaker, green shorts and tan visor enters the business (Subject A).

1150hrs "Subject A" exits the business and was followed by Officer Kitchens #381 and a traffic stop was initiated for a violation of a traffic control device.

I conducted a roadside interview with Subject A concerning his activity inside the business, and was advised of the following: He stated a friend had referred him to the business. Subject A advised he had been to the business several times previously. Subject A stated when he entered the business he was in a foyer/lobby where he waited for an employee. He advised he was greeted by an Asian Female, he identified as "Ava". Subject A advised he asked for a half hour massage and was escorted to a massage room where he disrobed and laid face down on a massage table inside the room. Subject A advised he received a massage and when he turned over "Ava" manually stimulated his penis to climax. No condom was used. Subject A advised at the conclusion, "Ava"

cleaned him off using a hot towel and he was provided with napkins. I showed subject A a photograph of Lei Wang who he identified as "LuLu". Subject A advised "LuLu" was individual he paid for the massage. I also showed subject A a photograph of Hua Cao, a known employee of the spa, who he identified as "Ava". Subject A advised he gave "Ava" \$70.00 for the services performed.

1300hrs "Subject B" arrives at the business driving a white Hyundai Genesis

1330hrs "Subject B" exits the business and was followed by Officer Kitchens #381 and a traffic stop was initiated for unlawful speed.

I conducted a roadside interview with Subject B concerning his activity inside the business, and was advised of the following: He stated a friend had referred him to the business and he had frequented the business several times before. Subject B stated when he entered the business he was in a foyer/lobby where he waited for an employee. He advised he was greeted by an Asian Female and he asked for a half hour massage. Subject B advised he paid \$59.00 for the massage and was escorted to a massage room. Subject B stated once inside the room he disrobed and laid face down on a massage table. Subject B advised he received a massage and when he turned over the female manually stimulated his penis to climax. No condom was used. Subject B advised at the conclusion, the female cleaned him off using a hot towel and he was provided with napkins with which he finished cleaning himself off. Subject B stated he gave the female \$20.00 cash for the services provided.

1445hrs "Subject C" arrives at the business driving a white Mercedes Benz SUV

1500hrs "Subject D" arrived at the business driving a four door black Honda.

1545hrs "Subject C" exits business and was followed by Officer Palladino #362 and a traffic stop was initiated for violation of a traffic control device. I conducted a roadside interview with Subject C concerning his activity inside the business, and was advised of the following: He stated he had just moved to the area and saw the business and had been there one time previously. Subject C stated when he entered the business he was greeted by an Asian female. Subject C stated he asked for an hour long massage and paid \$80.00 in cash and the female gave him \$1.00 back from the register. Subject C advised he was escorted to a massage room where he entered and disrobed. Subject C advised he lied down on the massage table face down and a different female, he identified as "Ava" gave him the massage and when he turned over on his back, the female manually stimulated his penis to climax. No condom was used. Subject C advised at the conclusion, the female provided him with a hot towel along with napkins to clean off with. I showed subject C a photograph of Hua Cao and he advised he believed she was "Ava". I also showed him a photograph of Lei Wang and he advised he believed her to be the female he paid at the front of the business.

1605hrs Subject D exited the business and was followed by Officer Kitchens #381, where a traffic stop was initiated for running a red light. I conducted a roadside interview with subject D who advised the following: when he entered the business he was in a foyer/lobby where he waited for an employee. He advised when he entered the plaza, he parked next to a white Mercedes with a maroon roof. Subject D advised an Asian female exited the vehicle and entered the business along with him. Inside the business, Subject D stated the same female asked him if he wanted 1 hour and he advised he did and stated he paid \$79 via credit card. Subject D stated he had visited the business previously and was waited on and paid the same female. The female then escorted to a massage



room. Once inside the room he disrobed and laid face down on a massage table. Subject D advised a different female from the initial female gave him a massage and when he turned over the female manually stimulated his penis to climax. No condom was used. Subject D advised at the conclusion, the female provided him with a hot towel to clean off with. I showed Subject D a photograph of Lei Wang and he identified her as the female driving the white Mercedes and stated she was the same female he paid today and on his previous visit.

During the surveillance operation, Lei Wang was seen exiting the business and entering a white Mercedes Benz convertible with a maroon top bearing FL# HNST08. The vehicle left the plaza and was surveilled as it traveled North on U.S. Highway 1 to a known plaza in Martin County where another illicit Asian Massage Parlor is located. Wang exited her vehicle and made contact with an unidentified white male.

Based on the above described information, there is probable cause to believe Lei Wang did reasonably believe or know another person was engaged in prostitution and Lei Wang did live or derive support or maintenance in whole or in part from what was believed to be the earnings or proceeds of such person's prostitution, contrary to Florida Statute 796.05(1) and (2)(a).

Based on the surveillance, a review of subpoenaed documents, other investigative methods and your affiant's experience in investigating similar illicit spa/massage parlor businesses, your affiant believes the Orchids of Asia Day Spa, located at 103 S. U.S. Highway 1 Unit #C2, Jupiter, is operated using a standard Asian Massage Parlor model. The overwhelmingly (if not exclusively) male customer clientele enter the business for a flat fee which goes directly to the business. The male customers then negotiate a fee or price with the female providing the service (sexual act). The money brought into the business through cash and credit/debit card transactions is then deposited into a business account in the name of Orchids of Asia. This investigation has taken place over a significant period of time. Surveillance along with other investigative means has shown that this pattern of criminal conduct is ongoing and not isolated to a specific employee, day of the week.

Further, your affiant has specialized training and experience in the investigation of prostitution organizations. The totality of circumstances regarding the statements of customers, the volume of male customers, short term traffic and information gathered on the business through various investigative techniques as well as an analysis of banking and financial records, lead your affiant to believe that a prostitution organization is being run out of the Orchids of Asia Day Spa business, 103 S. U.S. Highway 1, #C2, Jupiter, County of Palm Beach, State of Florida.

The following investigative methods, which are commonly utilized during the investigation of various criminal cases have either been tried and not succeeded in achieving the goals of the investigation, are too dangerous, or may jeopardize the investigation if employed or are not applicable in this particular investigation.

Many times in investigations involving massage parlors law enforcement agencies will employ the use of undercover officers or confidential informants. These undercover officers or informants will enter the business (while being monitored and many times recorded) and attempt to negotiate for a sex act in exchange for an amount of US Currency. This investigative technique is problematic for several reasons. Firstly, often times the women performing the (sexual) act are instructed not to speak or negotiate specifically for a sex act. Secondly, if the woman performing the massage is willing to discuss a specific sex act it may not occur until the customer is in a state of almost complete undress. This is a substantial safety concern for any officers working undercover or informants being utilized. Finally, due to the stated

concerns above, often times the undercover officer or informant will have to allow the woman performing the massage to touch his genitals in order to "consummate" the act in order for a crime to occur. Again this is tremendously problematic as it requires the undercover officer or informant to he himself commit a crime to further the investigation. A crime, none the less that is at the crux of the investigation. This is a concern ethically for both the particular officer involved as well as his law enforcement agency of employment.

Interviewing current or past employees of a business or organization is a tactic often used to further an investigation. During your affiant's experience in investigating Asian/Latin Massage parlors he has discovered that many of the women working there can be in the United States illegally or in a temporary status. Further some engaged in prostitution at these massage parlors/spas as a means to support themselves and their families. Thus, these girls are usually not interested in speaking with or cooperating with law enforcement for they fear status issues and/or a loss of income. Additionally, women working at Asian Massage parlors may also engage in prostitution as a means to repay a debt for transportation to the United States or to protect themselves and/or their families from abuse. Thus, they are very reluctant to speak with law enforcement out of fear and often times will be untruthful if interviewed. Therefore interviewing women who are or have worked at the business and obtaining truthful statements from them is an exceedingly difficult task. In addition, should the women not wish to cooperate, the investigation could be exposed and the owners/managers of the massage parlor may become aware of our investigation.

Your affiant believes a "sneak and peek" warrant is needed to identify and arrest subjects involved in prostitution as it relates to the Deriving of Funds from the proceeds of Prostitution occurring at and due to the Orchids of Asia Day Spa located at 103 S. U.S. Highway 1 #C2, Jupiter, Florida. While probable cause exists to believe prostitution is occurring inside the business at 103 S. U.S. Highway 1 #C2, your affiant and any fellow officers are unable to directly observe the said act of prostitution, which provides the necessary element to the charge of deriving funds from the proceeds of prostitution without the assistance of covert visual, non-audio surveillance.

Additionally, the focus of this investigation is not only the customers committing prostitution but more importantly those involved in deriving funds from the proceeds of prostitution, to include the owner(s) and/or manager(s) of the business and possibly any of the women working at the business. Your affiant believes that a "sneak and peek" warrant is the best and only way law enforcement can conclusively say prostitution is occurring inside the business. Thus, while voluntary statements of customers exiting the business is supportive to this argument, it is not enough, in and of itself, to establish the predicate crime of prostitution, which is required to charge deriving funds from the proceeds of prostitution. Additionally, while the previous customer statements and surveillance do lend support to the belief that probable cause exists to suppose that prostitution is occurring inside the business, it does not allow for a furtherance of an investigation regarding the deriving funds from the proceeds of prostitution without great risk to our case. Therefore, video surveillance is the only option to obtain definite evidence of prostitution occurring inside the business to further our investigation.

Further, in requesting the issuance of this "sneak and peek" warrant your affiants have strongly considered the 1990 10<sup>th</sup> Circuit Court of Appeals decision U.S. v. Mesa-Rincon, 911 F.2d 1433 (10<sup>th</sup> Cir. 1990) which addressed the parameters regarding what was then Title III searches (wire-taps). In the decision, the court specifically addressed silent, video-only surveillance. In the context of electronic interception of visual images, which is not regulated by federal statute, the courts have devised some safeguards by analogy to those required by Title III; but they have not necessarily adopted those Title III requirements that do more than implement constitutional requirements. See, e.g., United States v. Blasucci,

786 F.2d at 510; United States v. Torres, 751 F.2d at 884-85, US v. Falls, 34 F.3d 674 (8<sup>th</sup> Cir., 1994); US v. Koyomejian, 970 F.2d 536 (9<sup>th</sup> Cir. 1992). Based on the information provided above, your affiant believes that all guidelines have been met through this investigation. See also U.S. v. Batiste, 2007 U.S. Dist. LEXIS 61186.

Upon issuance of the "sneak and peek" warrant, covert surveillance cameras will only be placed in locations where prostitution is believed to be occurring. In addition, the front lobby of the business will also be under surveillance as this is where the exchange of money is believed to be occurring. There will be no cameras installed in areas expected to be non-criminal in nature, i.e. kitchen, bathroom, personal bedrooms. Additionally, the view of the video monitor will be situated in the monitoring room such that the view is not observable by persons other than those persons monitoring the view in the proper performance of the monitor's official duty. The visual, non-audio surveillance will be monitored during "peak hours" of the business, previously determined during other surveillance.

Your affiant, Detective Andrew N. Sharp, is a sworn Police Officer for the Jupiter Police Department, Jupiter, Palm Beach County Florida, since February 2007. Your affiant received an Associate of Arts Degree in Criminal Justice from Indian River State College in May 2006. Your affiant is a graduate of the Indian River State College Police Academy with 700 hours recruit certificate, and has completed in excess of three hundred (300) hours of continuing additional law enforcement training, including but not limited to:

Speed Measurement, Narcotics & Dangerous Drug Identification, Interviews & Interrogations, New Criminal Investigators Seminar, The Reid Technique Investigative Interviewing & Advanced Interrogation, Introduction to Criminal Investigations, Criminal Investigations, Body Language & Deception, Criminal Interdiction, Prescription Drug Crimes, Criminal Street Gangs Overview, Introduction to Clandestine Laboratory Investigations, Advanced Undercover Techniques and Survival, Command and Control Overview, Introduction to Highway and Rural Drug Investigations, The Art of Surveillance, The Undercover Officer, Interviews and Interrogations in High Risk Environments.

During the time your affiant has been a Police Officer, he has been assigned as a Road Patrol Officer, Field Training Officer, and a member of the Strategic Response Team. From February 2007, Your affiant responded to and conducted preliminary investigations on a variety of calls for service and was primarily assigned to our town's high crime areas. Since July 2016, your affiant has been assigned to the Jupiter Police Department's Criminal Investigations Division, as a Detective. From the commencement of the assignments to present, your affiant has personally participated in the investigations of person crimes, sexual crimes, robbery, and burglary in which such investigations has resulted in arrests or exceptional clearances. Your affiant has been involved with the execution of numerous search warrants.

Your affiant is empowered by F.S.S. 943 to conduct investigations and make arrests for violations of Chapter 796 related to Prostitution. Your affiant is a duly sworn law enforcement officer within the meaning of F.S.S. 934.02 (6) and is empowered to make arrests for the offences enumerated in F.S.S. 934.07, in particular, the offenses dealing in narcotics and dangerous drugs as well as prostitution, money laundering, and organized crime. Your affiant is currently responsible for the investigation detailed herein, which is being carried on in an organized manner, and in aid to which investigation, this application is made.

Your affiant wish to surreptitiously enter the described location for the purpose of covertly conducting electronic video surveillance of the interior location of the location to identify participants in the criminal enterprise, commonly referred to as a "sneak and peek". There shall be no capability on any of the installed equipment to allow audio monitoring or recording. The entry may be made within ten days of issuance of this warrant, in the daytime or the nighttime, or on Sunday, to forthwith install, monitor and perform



maintenance on electronic video surveillance on the said premises herein before specified. Once monitoring of the subject premises begins, your affiant will continue monitoring for no more than five days without further order of this court. The warrant shall be terminated or renewed based upon the evidence gleaned from the surveillance. Due to the property location and the covert nature of the criminal enterprise, no other, less intrusive investigatory means employed thus far have been successful, nor are that likely to be in the future. Upon termination of this order Your Affiant shall forthwith make return of his doings within ten days from the date thereof. Upon termination of the conditions justifying the need for covertness, notice of the surreptitious search will be given within seven days to the responsible person(s) of the location to be searched.

BASED ON YOUR AFFIANT'S knowledge, training and experience, there is probable cause to believe that the business located at **103 S. U.S. Highway 1, Unit #C2, Jupiter, Palm Beach County, State of Florida**, is being utilized to operate a prostitution organization and/or derive support from the proceeds of prostitution.

BASED ON all the foregoing information, your Affiant also has probable cause to believe that a violation of the laws of the State of Florida, to-wit: Chapter 796, Florida State Statutes, exists in the premises addressed at **103 S. U.S. Highway 1, Unit #C2, Jupiter, Palm Beach County, State of Florida**.

WHEREOF, affiant makes this affidavit and prays the issuance of a search warrant in due form of law for the surreptitious installation of video monitoring equipment within the above described (premises) for the said property, heretofore described, and for the monitoring and recording of visual non-audio conduct and safe keeping of the property, subject to the order of this Honorable Court or such other Court having jurisdiction over the offense, by the duly constituted officers of the law.

  
AFFIANT

Detective Andrew Sharp #412/1101

Sworn to and subscribed before me this 15<sup>TH</sup> day of January 2019

  
Honorable Judge Howard Coates of the Fifteenth  
Judicial Circuit in and for Palm Beach County

# **EXHIBIT B**

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STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
INVESTIGATIVE SERVICES  
INV369 - Massage Establishment



File # 29281  
Insp # 202034

NAME ORCHIDS OF ASIA DAY SPA INC	PERMIT NUMBER 29413	DATE OF INSPECTION 11/14/2018
DOING BUSINESS AS ORCHIDS OF ASIA DAY SPA		
STREET ADDRESS 103 South US HWY 1 Ste. C2	TELEPHONE # 561-386-8212	EXT
CITY JUPITER	COUNTY PALM BEACH	STATE/ZIP FL/33477

Additional Information

Owner Contact

--	--

Inspection Employee Tracking

License Number 74437	Person Employed Lei Wang
Date Entered 4/26/2016	
License Number 78389	Person Employed Dongmei Wang
Date Entered 4/26/2016	
License Number 78327	Person Employed Liansu Cong
Date Entered 4/26/2016	
License Number 81172	Person Employed Cuixiang Zhan
Date Entered 4/26/2016	
License Number MA80755	Person Employed HUO CAO
Date Entered 11/14/2018	

License Relations

Establishment - Owner

ZHANG, HUA	License #
------------	-----------

INV 369 - Massage Establishments

Massage Establishment Requirements

Current establishment license. [480.043(1), F.S.]	Yes
Establishment license conspicuously displayed. [64B7-28.008(3), F.A.C.]	Yes
Employed person(s) duly licensed. [480.047(1)(c), F.S.]	Yes
Each Massage Therapist's license conspicuously displayed and a 2 inch by 2 inch photo is attached by effective date required by rule. [64B7-28.008(1)(a), F.A.C.]	Yes
If advertisement is visible at this establishment, must meet requirements of 480.0465, F.S.	Yes
Establishment complies with local building code requirements. [64B7-26.003(1)(a), F.A.C.]	Yes
Public premise areas provided with safe and unobstructed human passages. [64B7-26.003(3)(a), F.A.C.]	Yes
Garbage and refuse removal provided. [64B7-26.003(3)(a), F.A.C.]	Yes
Safe storage/removal of flammable materials provided. [64B7-26.003(3)(a), F.A.C.]	Yes
Premise fire extinguisher maintained in good working condition. (Sprinkler system not acceptable substitute.) [64B7-26.003(3)(b), F.A.C.]	Yes
Exterminate all vermin, insects, termites and rodents on premises. [64B7-26.003(3)(c), F.A.C.]	Yes
Safe/sanitary massage equipment maintained. [64B7-26.003(3)(d), F.A.C.] Some tables showing wear and tear, advised Lui.	No
Regular use of cleaners and bacterial agents or clean table covering utilized for each client. [64B7-26.003(3)(d), F.A.C.]	Yes
Maintain a sufficient supply of clean drapes for the purpose of draping each client while the client is being massaged, and launder before reuse all materials furnished for the personal use of the client, such as drapes, towels, and linens. As used herein "drapes" means towels, gowns, or sheets. [64B7-26.003(3)(e), F.A.C.]	Yes

**INV369 - Massage Establishment**  
**ORCHIDS OF ASIA DAY SPA INC**

Insp # 202034

File # 29281

Provide for the use of clients a bathroom with at least one toilet and one sink with running water. Such facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand-cleaning materials, sanitary towels or other hand-drying device such as a wall-mounted electric blow dryer, and waste receptacle. [64B7-26.003(1)(b), F.A.C.]	Yes
Toilet facility fixtures/components clean, in good repair. [64B7-26.003(3)(g), F.A.C.]	Yes
Maintain all bathroom and shower facilities and fixtures in good repair, well-lighted and ventilated. [64B7-26.003(3)(g), F.A.C.]	Yes
Toilet facility on premises or in same building within 300 feet of establishment. [64B7-26.003(1)(c), F.A.C.]	Yes
Lavatory in treatment room or within 20 feet for cleansing hands or chemical germicidal designed for use without lavatory. [64B7-26.003(3)(f), F.A.C.]	Yes
Clean/adequate shower facilities if whirlpool bath/sauna/steam cabinet and/or steam room on premise. [64B7-26.003(1)(d), F.A.C.]	Yes
Massage therapist not supervising more than one apprentice. [64B7-29.001(3), F.A.C.]	N/A
If requested, valid government identification was immediately presented upon request. [480.0535(1),(2) F.S.]	Yes
Establishment operating hours are within compliance. [480.0475(1) F.S.]	Yes
Under local ordinance (zoning), is this establishment being used as a principle domicile? [480.0475(2) F.S.]	N/A

**Colonic Irrigation**

Licensed massage therapist or apprentice licensee properly certified to perform colonic irrigation. [64B7-31.001(2), F.A.C.]	
Colonic irrigation equipment maintained in sanitary and safe working condition. [64B7-26.003(3)(d), F.A.C.]	

**Apprentice Program**

Apprentice certificate conspicuously displayed and a 2 inch by 2 inch photo is attached by effective date required by rule. [64B7-28.008(2), F.A.C.]	
Apprentice under supervision of licensed sponsoring massage therapist. [64B7-29.003(1), F.A.C.]	
Record of apprentice hours maintained and available for inspection. [64B7-29.003(4), F.A.C.]	

**Establishment Equipment Required In Addition to 64B7-26 For Apprentice Program**

Tables for massages. [64B7-29.001(5)(a), F.A.C.]	
Linen and storage area. [64B7-29.001(5)(b), F.A.C.]	
Colonic equipment if colonic irrigation taught. [64B7-29.001(5)(c), F.A.C.]	
Sterilization equipment if non-disposable colonic attachments are utilized. [64B7-29.001(5)(d), F.A.C.]	
Hydrotherapy equipment including hot/cold packs. [64B7-29.001(5)(e), F.A.C.]	
Appropriate textbooks and teaching materials. [64B7-29.001(5)(f)(1-6), F.A.C.]	

**Remarks:**

I have read and have had this inspection report and the laws and regulations concerned herein explained, and do affirm that the information given herein is true and correct to the best of my knowledge. I have received a copy of the Licensee Bill of Rights.

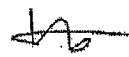
Inspector Signature:



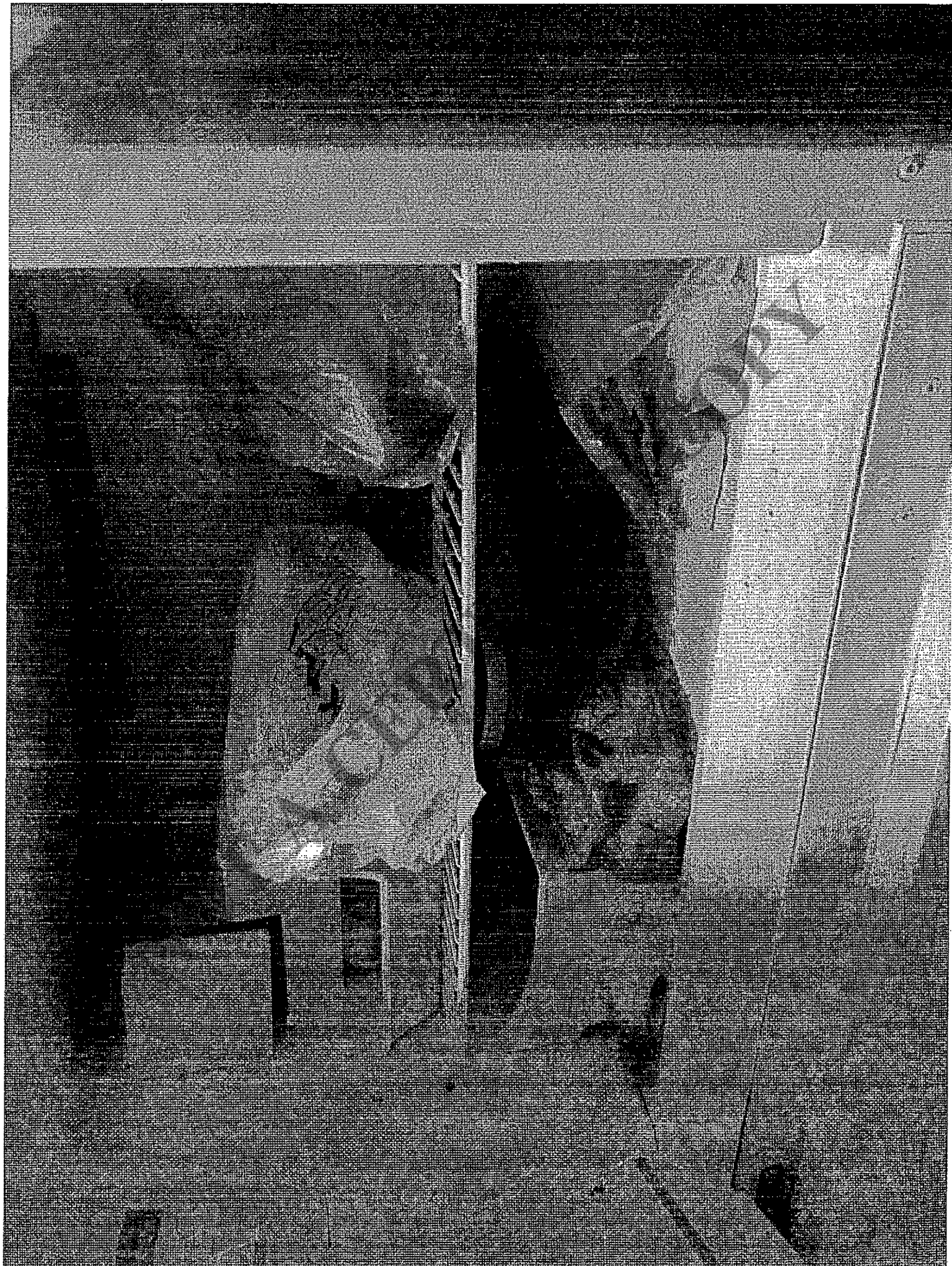
Date: 11/14/2018

Representative:

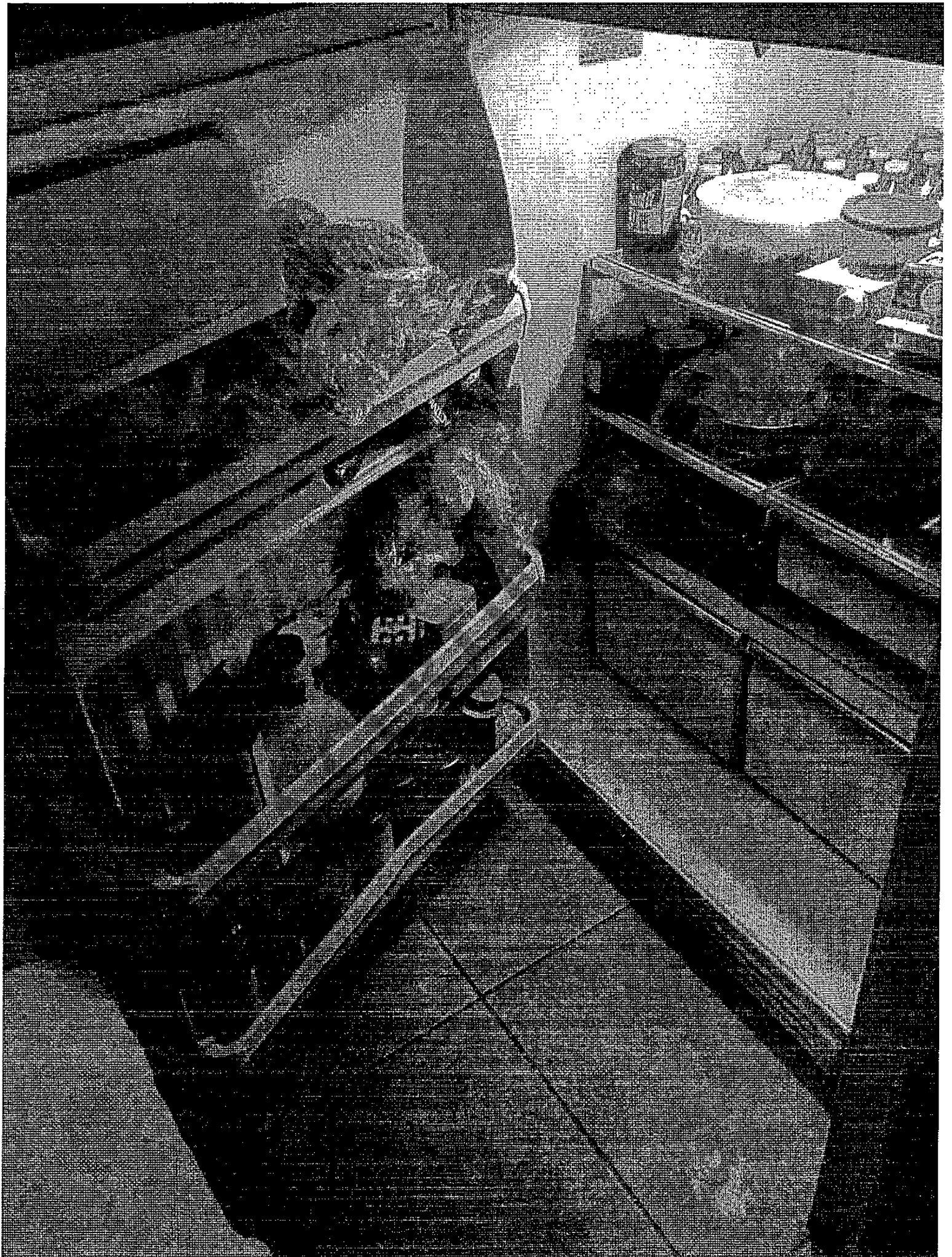
Lei Wang



Date: 11/14/2018









AC#7350200

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
DIVISION OF MEDICAL QUALITY ASSURANCE

DATE	LICENSING NO.	CONTROLLING NO.
06/10/2017	MA35177	308395

The MASSAGE THERAPIST named below has met all requirements of the laws and rules of the state of Florida.

Expiration Date: **AUGUST 31, 2019**  
**NINGEI SHEN**  
137-05 FRANKLIN AVE

AFT 5-L

FLUSHING, NY 11354

NEW YORK STATE  
DEPARTMENT OF HEALTH

137-05 FRANKLIN AVE  
FLUSHING, NY 11354

SHEN  
NINGEI



*[Handwritten signature]*

Box  
CCU1



*[Handwritten number 2]*

M.D. MPH  
and Secretary

# EXHIBIT C

NOT A CERTIFIED COPY



**SEARCH WARRANT AUTHORIZING THE MONITORING AND  
RECORDING OF VISUAL, NON-AUDIO CONDUCT**

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**THE STATE OF FLORIDA  
COUNTY OF PALM BEACH**

**IN THE NAME OF THE STATE OF FLORIDA, TO ALL AND SINGULAR:**

**The Sheriff of Palm Beach County, Florida, and his lawful Deputies, All Police Officers in Palm Beach County, Florida, The Commissioner of the Florida Bureau of Law Enforcement or any of his Duly Constituted Agents: to-wit:**

**Detective Andrew Sharp of the Jupiter Police Department.**

**WHEREAS, complaint on oath and in writing, supported by affidavit of a credible witness, or witnesses, to-wit:**

**Detective Andrew Sharp, Jupiter Police Department,**

**has this day been made before the undersigned:**

**Honorable HOWARD COATES Circuit Court Judge in and for Palm Beach County, Florida,**

**WHEREAS, said facts made known to me and considered by me have caused me to certify and find that the facts set forth in said affidavit show and constitute probable cause for the issuance of this warrant and the Court being satisfied of the existence of said grounds set forth in the affidavit and that the laws of the State of Florida have been or are being violated on or in a location known and described as follows:**

**The business located at:  
103 S. U.S. Highway 1, Suite C2, Jupiter, Florida, 33477.**

**To reach the premises:**

**Begin at the intersection of Indiantown Road and Military Trail. Travel east on Indiantown Road for 1.7 miles passed the intersection of Indiantown Road and U.S. Highway 1. Continue east on Indiantown Road and the plaza is the first entrance on the right of East Indiantown Road.**

**The business is readily recognized by:**

**The business is located on the far west side of the plaza and faces north. The exterior of the building is painted tan in color. The roof is green in color barrel tile. Suite C2 is a single story unit. A sign located in the front window of the business identifies the business and**

displays the words "Orchids of Asia Day Spa." There are also neon signs in the window with the words "Massage" and "Open". Two marked handicapped parking spaces are directly in front of the business. When facing the business, the front door is situated to the right of large multi-paned window. The front door is painted dark brown in color and is of apparent metal construction with large glass pane windows. The door is hinged on the right (west) and opens out (left to right).

This is a complete description of the business desired to be searched, along with the curtilage thereof and to diligently search said location and any and all persons found therein, who are reasonably believed to be involved in the crime or crimes,

being the premises occupied by or under the control of:

Hua Zhang (A/F, 12/13/60).

And there is now being kept on the above described (premises) certain:

Evidence of Prostitution in addition to fruits of, and instrumentalities of violation of the law(s) associated with Deriving Support from the Proceeds of Prostitution specifically the Non-audio, video recordings of individuals engaged in acts related to these violations.

which is being kept and used in violation of the laws of the State of Florida, to wit:

Deriving support from the proceeds of prostitution as enumerated under Florida State Statute 796.

which is in violation of the laws of the State of Florida, as enumerated in Chapter 796 of the Florida State Statutes.

**NOW THEREFORE**, you, or any Officer of the Jupiter Police Department, are hereby commanded with proper and necessary assistance, in the name of the State of Florida, to surreptitiously enter the described location for the purpose(s) of covertly conducting electronic visual, non-audio surveillance of the interior the location to identify participants involved in the criminal enterprise. There shall be no capability on any of the installed equipment to allow audio monitoring or recording. The entry may be made within ten days of issuance of this warrant, in the daytime or the nighttime, or on Sunday, to forthwith install, monitor and perform maintenance on electronic video surveillance on the said premises herein before specified. Once monitoring of the subject premises begins, affiant will continue monitoring for no more than five days without further order of this court. The warrant shall be terminated or renewed based upon the evidence gleaned from the surveillance. Due to the property location and the covert nature of the criminal enterprise, no other, less intrusive investigatory means employed thus far have been successful, nor are that likely to be in the future Upon termination of this order you are to


forthwith make return of your doings upon executing this warrant, which you are hereby commanded to execute as the law directs within ten days from the date thereof.

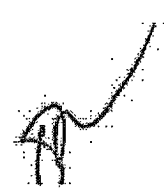
Upon issuance of the "sneak and peek" warrant, covert video surveillance cameras will be placed only in locations where prostitution is believed to be occurring. In addition, the front lobby of the business will also be under surveillance as this is where the exchange of money is believed to be occurring. There will be no cameras installed in areas expected to be non-criminal in nature, i.e. kitchen, bathroom, personal bedrooms. Additionally, the view of the video monitor will be situated in the monitoring room such that the view is not observable by persons other than those persons monitoring the view in the proper performance of the monitor's official duty. The visual, non-audio surveillance will be monitored during the business's hours of operation which has been determined through prior surveillance as.

Upon termination of the conditions justifying the need for covertness, notice of the surreptitious search will be given within seven days to the responsible person(s) of the location to be searched.

You are hereby commanded, in the event that you seize any of the said property herein before described, to make up at the time and place of seizure, a full, true and itemized list and inventory of all things seized and taken, in duplicate, signed by you, and to then and there give and deliver the said duplicate copy thereof of the person from whom possession shall be taken, if taken from the possession of anyone, together with a duplicate copy of this warrant, and if not taken from the possession of anyone, then to any person in charge of said (premises), and in the absence of any such person, to leave the same on or in the (premises). This court directs that the Affiant keep the original Affidavit and Application in support of this Search Warrant, in the custody of the executing agency until further Order of the Court or until release by the executing agency. The original of this warrant, together with the original inventory, shall be returned and filed with the Clerk of the Court as stated above within ten days of the issuance of this warrant. Further any property seized or taken shall be impounded for use as evidence at any trial of any criminal or penal cause growing out of the having or possession of said property.

WITNESS my hand and seal this 15<sup>TH</sup> day of January, 2019.

  
Honorable HOWARD COATES  
JUDGE of the Fifteenth Judicial  
Circuit in and for Palm Beach County



# **EXHIBIT D**

NOT A CERTIFIED COPY

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF  
MASSAGE THERAPY,

Petitioner,

vs.

CASE NO.: 14-2551

TANG LONG LIFE THERAPY MASSAGE,

Respondent,

DEPARTMENT OF HEALTH, BOARD OF  
MASSAGE THERAPY,

Petitioner,

vs.

CASE NO.: 14-2552 PL

HONG TANG, L.M.T.,

Respondent,

TRANSCRIPT OF PROCEEDINGS  
BEFORE  
ADMINISTRATIVE LAW JUDGE ROBERT E. MEALE

250 Australian Avenue South  
West Palm Beach, Florida 33401

November 10th, 2014  
9:05 a.m. - 1:47 p.m.

1 APPEARANCES:

2  
3 For the Petitioner:

4 CASIE BARNETTE, ESQUIRE

JENIFER FORTENBERRY, DOH

5 Department of Health Prosecution Services  
4052 Bald Cypress Way, #C65  
6 Tallahassee, Florida 32399

7 For the Respondent:

8 JACK ALAN GOLDBERGER, ESQUIRE

LEONARD FEUER, ESQUIRE

9 250 South Austrailian Avenue, Suite 1400  
West Palm Beach, Florida 33401

10  
11 ALSO PRESENT:

12 DANIEL HERNANDEZ

MICHELLE MILLER

13 CHRISTINA PARMER

HONG TANG, RESPONDENT

14 ALIC HUI, INTERPRETER

SM, WITNESS

15 MITCHELL BEERS, ATTY for SM

JAMES FORTWANGLER, WITNESS

16 JENNIFER MASON, WITNESS

CHRISTIAN PADILLA, WITNESS

1 COURT REPORTER: Okay.

2 THE COURT: Go ahead. Go right ahead,  
3 Counsel.

4 MS. BARNETTE: Okay. Thank you.

5 The Department expects that the evidence and  
6 testimony presented in this case will show that the  
7 respondents Hong Tang and Hong Tang Long Life  
8 Therapy Massage both hold licenses issued by the  
9 Florida Department of Health Board of Massage  
10 Therapy, and that between July 2013 through August  
11 2013 Hong Tang owned, operated, and practiced  
12 massage therapy at Hong Tang Long Life Therapy  
13 Massage.

14 The Department expects that the evidence and  
15 testimony will show that between July 2013 through  
16 August 2013 the Palm Beach County Sheriff's Office  
17 suspected the respondents in engaging in criminal  
18 activity and acts of prostitution and conducted  
19 surveillance of the respondent in her massage  
20 establishment.

21 The Department expects that the evidence will  
22 show that undercover Palm Beach County Agent  
23 Pedilla phoned respondent's massage establishment  
24 on August 22nd, 2013 after viewing contact  
25 information on a website title NaughtyReviews.com

1 and spoke with an Asian female.

2 We also expect that the evidence will show  
3 that Agent Pedia met with this Asian female at the  
4 respondent's establishment on August 22nd, 2013 and  
5 that this Asian female was revealed to be the  
6 respondent.

7 The evidence will show that during this visit  
8 the respondent made clear that she would manually  
9 masturbate Agent Pedilla's penis and engage in  
10 sexual activity in exchange for money.

11 The Department expects that the evidence will  
12 show that after undercover Agent Pedia provided the  
13 money to respondent the Palm Beach County Sheriff's  
14 Office executed a search warrant on respondent's  
15 massage establishment and that during that search  
16 the officers uncovered battery operated vibrators  
17 and liquid lubrication located within the massage  
18 room.

19 It is the Department's position that at the  
20 conclusion of all the evidence and testimony in  
21 this case the Department will have proven by clear  
22 and convincing evidence that the respondent Hong  
23 Tang used her position as a massage therapist and  
24 owner of respondent Hong Tang Long Life Therapy  
25 Massage to induce or attempt to induce her patients



1           A.    Do you want me to go through it?

2           Q.    Please.

3           A.    August 22nd.

4           Q.    Okay.  August 22nd of what year, please?

5           A.    2013.

6           Q.    And, what occurred after your surveillance  
7 concluded?

8           MR. GOLDBERGER:  Objection, Your Honor, vague.

9           THE COURT:  Sustained.

10          BY MS. BARNETTE:

11          Q.    After you concluded your surveillance of the  
12 massage establishment how did your investigation proceed  
13 after that?

14          A.    We used an undercover agent to enter  
15 Ms. Tang's business to see if she would solicit him for  
16 prostitution.

17          Q.    And, what was the name of the undercover  
18 agent?

19          A.    Agent Christian Padilla.

20          THE COURT:  Cadilla?

21          THE WITNESS:  Yes, sir.

22          THE COURT:  Would you spell that?

23          THE WITNESS:  P-A-D-I-L-L-A.

24          THE COURT:  Thanks.

25          THE WITNESS:  You're welcome.

1 BY MS. BARNETTE:

2 Q. Did you provide this advertisement to anyone  
3 else at Palm Beach County Sheriff's Office?

4 A. Yes.

5 Q. Who did you provide it to?

6 A. The other agents that were involved in that  
7 case.

8 Q. Anyone specifically?

9 A. Agent Padilla.

10 Q. Why did you provide this advertisement to  
11 Agent Padilla?

12 A. So he could have all the facts of the case  
13 prior to entering the business.

14 Q. And, you previously testified that you - that  
15 Agent Padilla conducted an undercover operation at Hong  
16 Tang Long Life; how do you know that he did that?

17 A. I was present that day.

18 Q. And, that day is August 22nd, 2013?

19 A. Yes, ma'am.

20 Q. On August 22nd, 2013 during - what did you do  
21 that day?

22 A. Me personally?

23 Q. Yes, you personally.

24 A. I was in charge of the operation that day, and  
25 I was outside of the business when Agent Padilla

1 entered.

2 Q. And, what operation were you in charge of?

3 A. The undercover operation.

4 Q. What activities did you do specifically?

5 A. I was on the outside perimeter waiting for  
6 Agent Padilla to go inside the business, and the plan  
7 was if Ms. Tang solicited for prostitution, then we  
8 would execute the search warrant.

9 Q. Did you in fact execute a search warrant that  
10 day?

11 A. Yes, we did.

12 Q. Did you enter the establishment during the  
13 search warrant execution?

14 A. I did.

15 MS. BARNETTE: I'm not showing the witness  
16 Petitioner's Exhibit Number 9 currently just marked  
17 for identification purposes on - we're on page 1 of  
18 7.

19 BY MS. BARNETTE:

20 Q. Do you recognize this?

21 A. I do.

22 Q. What is it?

23 A. This is the inside of her business I believe  
24 in massage room 1.

25 Q. How do you recognize it?

1 THE COURT: Very good. Thank you. Accepted.

2 MR. GOLDBERGER: Thank you, Judge.

3 DIRECT EXAMINATION

4 BY MS. BARNETTE:

5 Q. Agent Padilla, please state your full name and  
6 spell your first and last name for the record.

7 A. Agent Christian Padilla, C-H-R-I-S-T-I-A-N  
8 P-A-D-I-L-L-A, ID 9163.

9 Q. What is your occupation?

10 A. I'm a Deputy Sheriff with the Palm Beach  
11 County Sheriff's Office.

12 Q. Do you know the respondent in this matter,  
13 Hong Tang?

14 A. I do.

15 Q. How do you know her?

16 A. From this criminal case.

17 Q. How did you first come in contact with the  
18 respondent?

19 A. Via telephone.

20 Q. Did you already have her telephone number?

21 A. I was given it by Agent Fortwangler in  
22 reference to an ad that was posted online.

23 Q. Okay.

24 MS. BARNETTE: I'm not going to show the  
25 witness Petitioner's Exhibit Number 10.

1 BY MS. BARNETTE:

2 Q. Do you recognize this document?

3 A. Yes, I do.

4 Q. What is it?

5 A. This is the ad that Agent Fortwangler  
6 presented me with in reference to a massage parlor that  
7 he though was being --

8 MR. GOLDBERGER: Objection, Your Honor,  
9 hearsay as to what the agent thought.

10 THE COURT: He's responded to the question,  
11 you may proceed Ms. Barnette.

12 MS. BARNETTE: Thank you.

13 BY MS. BARNETTE:

14 Q. Approximately when did you first come in  
15 contact with Hong Tang?

16 A. On the - it was the morning of the operation.  
17 I'd have to refer to report for the exact date.

18 MS. BARNETTE: I'm not going to refresh the  
19 witness's memory with his report.

20 THE WITNESS: It was on - around 10:00 was  
21 when I made the initial phone call on August 22nd.

22 THE COURT: Around when?

23 THE WITNESS: 10:00 o'clock in the morning,  
24 Your Honor.

25 THE COURT: Thank you.

1 BY MS. BARNETTE:

2 Q. On what date?

3 A. August 22nd.

4 Q. Of what year?

5 A. '13.

6 Q. How would you describe the voice of the person  
7 you spoke with when you called --

8 A. It was --

9 Q. -- based on the advertisement? I'm sorry.

10 A. It was a female's voice and slight accent.

11 Q. Can you describe the accent?

12 A. I wouldn't be able to testify to that. It was  
13 an accent. I could tell it wasn't - I just could hear  
14 an accent.

15 Q. Okay. And, on August 22nd, 2013 did you go to  
16 the massage establishment?

17 A. I did.

18 Q. What clothing were you wearing that day?

19 A. I was wearing plain clothes. I don't recall  
20 specifically, I think a t-shirt and shorts is what I was  
21 wearing.

22 Q. Okay. What happened when you arrived at Hong  
23 Tang Long Life?

24 A. I walked in. I heard a voice tell me to come  
25 back. I recognized the voiced from the same voice I

1 heard on the telephone just previously.

2 Q. Did you meet with anyone?

3 A. I did. I met with Hong Tang who asked me to  
4 go into a room.

5 Q. Was anyone else present at the massage  
6 establishment?

7 A. No, there was not.

8 Q. What happened after the respondent greeted  
9 you?

10 A. She went into the back of the establishment, I  
11 went into the room. Shortly after, she entered the  
12 room.

13 Q. Okay.

14 MS. BARNETTE: I'm not going to show the  
15 witness Petitioner's Exhibit Number 9, page 2 of 7.

16 BY MS. BARNETTE:

17 Q. Do you recognize this?

18 A. Yes, this is the room that I went into.

19 Q. Okay. And, who else was in the room with you?

20 A. Hong Tang entered after I was in.

21 Q. So, what happened after you and Hong Tang were  
22 both in that room?

23 A. We negotiated prices for a massage. I asked  
24 her if the massage included full-service. And, then we  
25 negotiated the price on that.

1 Q. Why did you ask her whether the massage  
2 included full-service?

3 A. Full-service is a term that I know through my  
4 training and experience --

5 MR. GOLDBERGER: Objection, Your Honor as to  
6 a: if this witness is going to testify as an expert  
7 witness on his training and experience I would ask  
8 for a Daubert Hearing, and b: if he's going to  
9 testify about general criminal activity it is  
10 irrelevant what general criminal activity is. What  
11 is relevant is the specific acts that my client  
12 allegedly committed.

13 MS. BARNETTE: Your Honor, I withdraw the  
14 question.

15 THE COURT: All right.

16 BY MS. BARNETTE:

17 Q. Okay. So, once you were in the massage room  
18 with Hong Tang, can you please go through what your  
19 conversation was with her about the prices?

20 A. I did. I asked her if it included full-  
21 service; she, then, responded with a hand motion  
22 advising that she could perform --

23 MR. GOLDBERGER: Objection, Your Honor, calls  
24 for speculation.

25 BY MS. BARNETTE:



1 Q. Could you please demonstrate that hand motion?

2 A. She went like this.

3 Q. Did she day anything when she did that hand  
4 motion?

5 A. She did not.

6 THE COURT: Describe for the court reporter  
7 verbally what your motion just indicated, sir.

8 THE WITNESS: She cupped her hand - her right  
9 hand in a cylindrical fashion and moved her hand in  
10 an upwards and downwards fashion.

11 THE COURT: Thank you. You may proceed.

12 BY MS. BARNETTE:

13 Q. What did you ask her about the prices for the  
14 massage?

15 A. If that would be an additional price for she  
16 motioned.

17 Q. What was your initial request? Like, what did  
18 you go in there to receive?

19 A. Just a massage.

20 Q. How long?

21 A. Half an hour.

22 Q. And, did you ask about the price?

23 A. I did.

24 Q. What did she say?

25 A. I'd have to refer back to the report for the

1 exact --

2 MS. BARNETTE: The witness is now refreshing  
3 his memory with his report.

4 THE WITNESS: She quoted me it was 50 dollars  
5 for a half hour, and then she advised me it's an  
6 additional 30 dollars for what she motioned to me.

7 BY MS. BARNETTE:

8 Q. So, she advised that it was 30 dollars after  
9 she did the motion --

10 A. Correct.

11 Q. -- towards you?

12 A. 30 dollars additional. And, then I verified  
13 with her that it would be 80 dollars total?

14 Q. Did you pay her?

15 A. I did.

16 Q. How much did you pay her?

17 A. 80 dollars.

18 Q. Do you remember what sort of denomination of  
19 bills?

20 A. They were in 20's and they were from the PBSO  
21 Investigator Fund. They were serialized.

22 Q. I'm now referring to Petitioner's Exhibit  
23 Number 9, page 2 again; do you recognize the money  
24 pictured here?

25 A. I do.

1 Q. How do you recognize it?

2 A. That is the money that I issued her.

3 Q. And, referring back to page 1 of 7 do you  
4 recognize that photo?

5 A. I do. That is also the money that I issued.

6 Q. And, on August 22nd, 2013 did you receive a  
7 massage from the respondent?

8 A. I did not.

9 Q. Why not?

10 A. Once I spoke with her and I felt that I had  
11 obtained probable cause, I left the establishment.

12 Q. And, what happened after you left?

13 A. Agents followed me in and executed a search  
14 warrant for the establishment.

15 Q. Okay. Thank you.

16 MS. BARNETTE: I have nothing further for this  
17 witness.

18 THE COURT: Cross?

19 MR. GOLDBERGER: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GOLDBERGER:

22 Q. Agent Padilla, I want you to look at Exhibit  
23 9, Number 1; you indicated that's the money you gave to  
24 the woman that we stipulated was Hong Tang. Is that  
25 correct?

# **EXHIBIT E**

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**DRAFT Transcript:**  
**Feb. 22, 2019 Press Conference Given by Town of Jupiter Police Department**

Video: <https://boston.cbslocal.com/video/4034283-web-extra-florida-police-press-conference-on-prostitution-sting-and-robert-kraft-charges/>

**Transcription Key**

**C** = Daniel Kerr, Chief of Jupiter PD

**D** = Andrew Sharp, Detective with Jupiter PD

**Q[M]** = Male reporters

**Q[F]** = Female reporters

**C:** Thank you all for your patience in this investigation. As you know, Tuesday, February 19<sup>th</sup>, we entered the business in our community, of the Lotus, er, the Orchid Spa, and arrested two individuals: Lei Wang, 40 years old; and Hua Zhang, 59 years old.

At that time we also served two search warrants on businesses, five search warrants on residences. And those occurred in Jupiter, Martin County, and three in Orange County.

Obviously our concern in this investigation center around our, the possibility of victims of human-trafficking, the appearance, maybe, of that. Um, we're working with advocacy groups and interpreters, in getting as much support for them as we possibly can. We've been working with the State Attorney's office here in Palm Beach County. We've also worked with our other jurisdictions, uh, that are also doing similar investigations, particularly, uh, Martin County.

We have, uh, 25 individuals, additional, that will be charged, and those filing packets have been, uh, forwarded on to the State Attorney's office, and my staff will be passing out a list of those individuals, as we're speaking here.

These individuals will be charged solicit-, soliciting another to commit prostitution. We also have some concerns and some appearances of obvious money-laundering in this case that we'll be investigating further. Much of our evidence comes directly from the businesses, also from body-worn cameras of our officers, and also surveillance that we have been conducting over the last several months. Are there any questions?

**Q[M]:** Chief, Michael Williams, News Channel Five—

**C:** Yes, sir.

**Q:** —you see one of the names on this list. Can you confirm for us that that name is the high-profile individual, professional sports franchise owner that you believe it to be. Could you please speak to that name and that situation?

C: Yes sir, he, he is one of the individuals—

Q[M]: Could you please name who he is?

C: That would be Mr. Robert Kraft.

Q[M]: Robert Kraft, the owner of the New England Patriots?

C: Yes, sir.

Q[M]: And what is he being charged with.

C: He's being charged with the same offenses as the others, and that is soliciting another to commit prostitution.

Q[M]: And how many counts may he face?

C: Right now we have two.

Q[M]: So that would be two separate incidences or visits to the Orchids of Asia Day Spa, or one visit with multiple charges in that one visit?

C: Two different visits.

Q[F]: What are the charges?

C: Again, I'll repeat. Soliciting another to commit prostitution. And we'll be providing you also with, you know, further information after this.

Q[M]: Is there video evidence of this alleged acts?

C: Uh, yes sir, for all the individuals being charged.

Q[M]: There has been some concern and some complaint that other names were released sooner than happened with Jupiter PD, and that, to some degree, given the notoriety of Mr. Kraft that this was slow-walked. What do you say to those who argue that other agencies were doing this work, and releasing names much more quickly?

C: Well, actually, some of the other, um, organizations have been, uh, involved in their investigation longer than we have. And, uh, our State Attorney had to go over this evidence with us this week. And, you know, obviously this is a different judicial district than the other counties. So that's the reason why it's taken us a little bit longer. And, you know, obviously you will be getting as much information as you need.

Q[M]: Can you give us a timeframe over which these alleged acts occurred, what, what dates we're talking about?

C: Um, I don't have those in front of me right now, but it was probably approximately a month ago or so.

Q[F]: Can you confirm again this is New England Patriots owner Bob Kraft?

C: Yes, yes it is.

Q[F]: Have you had contact with Bob Kraft?

C: Uh, have I had contact with him? No.

Q[F]: Are there any professional [unintelligible] on this list, or anyone else notable here in the community?

C: No.

Q: No officials, nobody in public office?

C: No.

Q[F]: Chief Harris, [unintelligible] with WPTV. This might be a question for the detectives, but in Hua Zhang's arrest report, there are a list of Johns, can you tell us which male, um, number, Mr. Kraft is – in the arrest report?

C: I'm not, that the detective would have that right at hand, but [now looking to detective, at side of podium] do you have?...

D: I don't have that number right at hand. Um, you'd have to refer to, uh, the date that he was there, uh, that would be available in the probable cause affidavit when that gets released.

Q[M]: Chief, your counterpart in Martin County, uh, was very direct the other day, saying that the allegations of this human-trafficking, sex ring, running out of spas, that the alleged Johns are, in their own way, as culpable for what may have happened to those women, uh, and their actions. Can you speak to that as it relates to Mr. Kraft and to others?

C: Well, to everyone, obviously, if there are customers, then these types of business can flourish.

Q[M]: What kind of dollar transactions are we talking about?

C: [No looking to detective, at side of podium] Uh, would you like to?...

Q[M]: What money did he spend to be at that spa?

D: I can't give you an exact number. I can tell you that there is a certain fee that is paid, uh, when you enter the establishment for, yeah, sorry [steps to the podium, so as to speak into microphone]

Q[M]: Can you give us your name please, sir?

D: Yeah, J-, I'm detective Andrew Sharp, I was the lead detective on the case. I can't speak to the exact dollar number that that individual paid. However, there is a specific, uh, number for a timeframe when you are there, that you pay.

Q: Did he pay, d-do the allegations show he paid with cash, with a credit card, with somebody else's credit card – how did he pay for the services he's alleged to have had?

D: Uh, because, well, that information is contained in the probable cause affidavit I can't speak to that exactly yet. But when that's released you'll have that information.

Q[M]: Could you tell us what the average fee would have ranged for these type of services?

D: Sure, so it appears, uh, when you, uh, go to the spa for a half hour, um, the fee would be 59 dollars, for an hour that would be 79 dollars.

Q[F]: Was he there for an hour?

D: I can't speak directly right now on the time that he was there.

Q[F]: Has he been in contact with your office, or his attorneys contacted you, does he plan to turn himself in, or have a court appearance – what do you know?

D: I would direct that to the State Attorney's office of the Palm Beach County. He is not, it's all part of the process, he has not reached out to me directly, um, or anyone here at the police department yet.

Q[M]: These would be misdemeanor charges that they all face?

D: The Johns, correct, yes sir.

Q[M]: Punishable by what—

D: It, it's a misdemeanor, so whatever the statute requires for the misdemeanor.

Q[F]: Detective—

Q[M]: What typically—, sorry to interrupt.

Q[F]: Detective Sharp, were there any other people that could be possibly rounded up in this case, or are these listed names, like, the people that you guys have.

D: All the list of names that you have are all of the individuals that we currently have charges on. Um, further charges might come as a result of the investigation. I can tell you that that might, uh, will not be, uh, the gentlemen here [i.e., the alleged Johns], my investigation of them is complete. But further charges might come from the owners of the spa, um, any other individuals that may be involved with any other facet of the investigation.

Q[F]: Can you tell us what's on the video, in terms of what kind of incidents it's showing?

D: It, uh, so, the video that we obtained, it shows the acts that took place. On ev-, on every gentleman that you have a list of, the acts that took place is recorded on that video.



Q[M]: Is Mr. Kraft alleged to have shown up by himself, was he driven there, was he with other people when he entered the premises, can you tell us any more detail whatsoever about Mr. Kraft?

D: Uh, so, ah, the times that Mr. Kraft was there he was driven. Um, and that name and information is, like I stated, it will be contained in the probable cause affidavit.

Q[M]: Was there a driver who waited there for him or left and came back and got him?

D: I, that question I can't answer sir.

Q [F]: So you were able to set up secret hidden cameras inside the spa and observe acts taking place inside the massage parlor rooms?

D: That's correct.

Q[F]: So, to be clear – the video evidence has Mr. Kraft, in that room, allegedly receiving those ac-, allegedly illegal acts?

D: So, uh, the question was, uh, does the video contain Mr. Kraft inside receiving the alleged acts. The answer to that is "yes."

Q[F]: Can you talk about how you're going to be serving these warrants. Are you going to be booking these gentlemen, are you going to be, uh, taking booking photos of them, are they getting their notices in the mail? How is this gonna work out?

D: So, how the 15<sup>th</sup> Judicial Circuit works is, uh, these are misdemeanor crimes. If you live and reside in Palm Beach County, you will receive a notice in the mail saying that you have a summons to appear in court. If you are outside Palm Beach County, um, if you are out of state, uh, then you will have a warrant for your arrest here in, uh, Florida.

Q[F]: And that would require a booking photo, if you have a warrant out for your arrest?

D: If you're outside of, uh, outside of the county or outside of the state, um, I believe the normal practice is you could have your attorney present. But those questions I would direct to the State Attorney's office, I don't...

Q[F]: Can you tell me-, I'm sorry, I know you said it before, but, to be clear, this is Mr. Kraft, the owner of the New England Patriots?

D: Yes.

Q[M]: How stunned were you all, frankly-, other agencies have talked about how stunned they were at some of the high-profile individuals? Chief, very candidly, how stunned were you that Bob Kraft, the owner of the New England Patriots, is on a list of people, uh, allegedly soliciting prostitution at a local day spa?

C: We're as equally stunned as everybody else, er, you know, of notoriety, that would be arrested.

Q[F]: He will not be arrested, correct, he'll be issued a Notice of Appearance?

C: He is not a resident of the State of Florida, so there would be an arrest warrant issued.

Q[F]: There would be an arrest warrant issued for Massachusetts?

C: From Florida.

Q[F]: So there's an active warrant for him, right now?

C: Uh, it's in the process with the State Attorney right now. They've been handed the entire case packet, and all the filing charges, and they'll, they'll be taking that process forward.

Q[F]: So is it in Massachusetts, or New York – can you tell me where his residence is?

[Chief steps aside and Detective Sharp returns]

D: So, uh, that individual resides in Massachusetts, so the information would be provided to, uh, whoever he selects to represent him. And he would have an active arrest warrant here in Florida, in Palm Beach County.

Q[F]: Did it seem like he was there as a regular, like, he was familiar with this, like, it was a regular event for him?

D: Uh, I would say, going through the evidence, yes.

Q[F]: So, it was more than one date you had [unintelligible]

D: Correct, as the Chief already spoke, there was two incidences.

Q[F]: Do you think that it spanned beyond those two incidences?

D: I, I, that would be casting an opinion at this time, I don't do that.

Q[F]: Will the driver face charges in the Kraft case?

D: At this time, no he won't.

C: No.

Q[F]: The driver will not, ok.

[Chief shaking head, "no"]

C: Alright, thank you all very much.

# **EXHIBIT F**

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**DAVE ARONBERG:** This charge is a first degree misdemeanor, punishable by up to one year in jail, and mandatory \$5,000-dollar fine, 100 hours of community service, and a class on the dangers of prostitution and human trafficking. We also expect receive filing packets for the two women who have been arrested by the Jupiter Police Department for, among other things, deriving support from the proceeds of prostitution, which is a second degree felony. All defendants are presumed innocent at this point. The charges begin the court process with local defendants being mailed a summons to appear in court. Out-of-county defendants will have a capias issued, which is essentially a low-level warrant, and will have to either surrender or have an attorney contact law enforcement to satisfy the warrant. The clerk's office will publicly release court dates for those receiving a summons, and the names of all the defendants will be released—and actually, they have been released already. The names of defendants already have been released by the Jupiter Police Department. I'd like to thank the men and women of the Jupiter Police Department for their professionalism and diligence in investigating these cases. It's our ongoing partnership with local law enforcement that helps keep our communities safe. You can tell a lot about our community by the way it treats its most vulnerable individuals and that includes victims of human trafficking, which is modern day slavery. Human trafficking is the business of stealing someone's freedom for profit. It could happen anywhere, including in the peaceful community of Jupiter, Florida. In 2017, our office joined with the Palm Beach County Sheriff's Office and the FBI to help start a human trafficking taskforce. Now, we are pleased with our progress but we realize there is a lot more to do. These cases aren't about any one defendant or group of defendants; the larger picture, which we must all confront, is the cold reality that many prostitutes in cases like this are themselves victims, often lured into this country with promises of a better life, only to be forced to live and work in a sweatshop or a brothel, performing sex acts for strangers. Human trafficking is built on force, fraud, or coercion. It is evil in our midst. It is also fueled by the demand side. Demands from otherwise law-abiding citizens who are not aware or don't want to be aware about those being exploited. Human trafficking often occurs in plain sight, which is why I'm hopeful that these cases will encourage people to say something if they see something. And for victims of this unreported crime to gain the courage to let their voices be heard. With that, I'd like to take any questions you may have.

**MALE 1:** Please identify yourself if you would.

**DAVE ARONBERG:** Yes.

**FEMALE 1:** [INDISCERNIBLE].

**DAVE ARONBERG:** No, if they are local residents, meaning if they live in Palm Beach County, they will receive a summons in the mail. It's like a ticket -- a notice to appear in court, and that court date can be found through the clerk's office. If they are from out of the county, then they are subject to a capias, which is in effect a low-level warrant, and that one, they would either have to surrender to the authorities or they could have an attorney reach out and satisfy the warrant.

**FEMALE 1:** [INDISCERNIBLE]

**DAVE ARONBERG:** There is no requirements.

**MALE 2:** [INDISCERNIBLE] from CBS-4 Miami. Do you have any kind of evidence or anything that any of these people [INDISCERNIBLE] human trafficking situation?

**DAVE ARONBERG:** Well, the matters are still being investigated, and I don't want to get too much into the details of the case, because this is a pending matter. But I can say this, that so far, there have been no charges of human trafficking in any of these cases, but that could change in the future depending on what the investigators

[00:05:00]

find.

**NIALA CHARLES:** [PH] Niala Charles, CBS 12--

**MALE 2:** [INDISCERNIBLE] West Palm Beach. They're—some of the investigations are months long and last a while [INDISCERNIBLE]. [INDISCERNIBLE] get this right in terms of charging everyone involved, but at the same time, perhaps these women were victims and held against their will, doing this for months as we're monitoring the situation. So how do you find the compromise between monitoring it and making sure you're getting everything right in terms of what you want to charge? But also, knowing that these women are suffering another day [INDISCERNIBLE]?

**DAVE ARONBERG:** Right, those are questions for the investigators, the police. The Jupiter Police engaged in a multi-month investigation, and then they turned over the filing packets to our office for prosecution. I think the question you have would be more geared toward investigators, but they're very professional and I think they did an outstanding job. So it's always a balance, as you say, between letting the [PH] county to continue to gain enough evidence to file charges and stepping in and stopping it. But that is really a question for the investigators. Yes, sir?

**MALE 3:** [INDISCERNIBLE]. First, two questions. Where are the women who were working in the — or [PH] prepping the brothel, and also do you think state law's sufficient enough to deal with this situation?

**DAVE ARONBERG:** I was a state senator when we tightened the laws against human trafficking. Florida Law is very strong against human trafficking. It is a first degree felony for most cases of adult human trafficking. When it comes to child human trafficking, it is a life felony. And if there's force involved, some violence involved, and adult human trafficking would become a potential life felony. So our punishments are severe. But there is a high burden of proof. You need to reach that burden of proof and that's always the question in these cases, which is why these investigations can take some time. But one thing I will mention about Florida Law is that Florida Law is also very progressive. If victims of human trafficking will speak up, they are eligible to have their records expunged, including arrests for prostitution. But they need to speak up. At the federal level, human trafficking victims are eligible for a T visa, which is a

visa that can allow them to stay in the country and it's only reserved for victims of human trafficking. So the key is to get the victims to speak up.

**MALE 3:** Where are the women now?

**DAVE ARONBERG:** Well, the women now—I know that the investigators have been talking with them and we have to go get details from those agencies, such as the Jupiter Police Department.

**MALE 4:** [INDISCERNIBLE] from NBC News. Florida has a new law that protects victims of crime from having their information revealed, is there any way that the clients, the johns here, are considered victims?

**DAVE ARONBERG:** No, Marsy's Law doesn't protect defendants. Marsy's Law protects victims of crime.

**DANIELLE WAUGH:** Danielle Waugh from CBS 12, these documents you just handed out would put Robert Kraft in the parlor on the moment of the AFC Championship game, is that correct? He was in Jupiter, Florida that morning?

**DAVE ARONBERG:** Well, the documents speak for themselves, what we've handed out was the capias themselves, and I know that we don't always give out those documents. But because the Jupiter Police Department identified the names in advance, and you all had the names for some time, we decided to, in the interest of transparency, let you have those documents. But they speak for themselves.

**FEMALE 4:** [INDISCERNIBLE] influence and money, power connection, is there any reason to believe that Robert Kraft will be treated any differently from the other 25--24 men?

**DAVE ARONBERG:** And I can assure you that our office treats everyone the same whether you have a lot of money or you are indigent, we treat all defendants the same and no one gets any special justice in Palm Beach County.

**NIALA CHARLES:** Niala Charles CBS 12 News, do you expect more arrests to come from other similar businesses within Palm Beach County?

**DAVE ARONBERG:** Well, it's hard to say because the investigators are the Jupiter Police and then you have the Martin County Sheriff's Department, you have Vero Beach, this is a multi-county effort, and so it's hard to say if there are more arrests based on their investigations. But, I was asked earlier today about rumors about bigger fish, and I said that that would be news to me. And I also added that it's hard for me to talk about rumors, especially false ones.

**FEMALE 3:** Robert Kraft was charged by the Jupiter Police [INDISCERNIBLE]

**DAVE ARONBERG:** No, there are two cases there. There are two counts.

**FEMALE 3:** [INDISCERNIBLE].

**DAVE ARONBERG:** Correct.

**MALE 5:** If your office is deciding to go from a second degree misdemeanor to fourth degree misdemeanor, what was it about the facts that you decided to up to what is the most you can do in this case?

**DAVE ARONBERG:** Well, all the cases are being charged as first degree misdemeanors under the tougher Florida statute, and one reason why that decision was made was because

[00:10:00]

that statute has a mandatory 100 hours of community services, a mandatory \$5,000 dollar fine, and a mandatory class on the dangers of prostitution and human trafficking, not to mention a potential for an increased jail sentence from 60 days to a year.

**MALE 6:** Robert Kraft owns multiple homes here and up in Massachusetts and California, would he be given a capias or a summons? How would you deal with--?

**DAVE ARONBERG:** There was a question whether or not Mr. Kraft lived here in Palm Beach County, and I believe we decided--it was a summons, so he does have a residence here. So he'll be receiving a summons.

[OVERLAY]

**DAVE ARONBERG:** The question is mugshots—when you get a summons in the mail, generally, you do not get a mugshot. Now, remember, that is up to the police department. It's not up to us, it's up to the local law enforcement agency.

**MALE 7:** Has he already been sent that summons?

**DAVE ARONBERG:** Has he already been sent the summons?

**FEMALE 4:** His attorney has been provided the summons.

**DAVE ARONBERG:** His attorney has been provided the summons.

**FEMALE 5:** [INDISCERNIBLE] about putting their mugshots and their driver's license out—pictures out and you guys are handling that a little bit differently, do you feel like -- are you happy with the way it's being handled?

**DAVE ARONBERG:** I think that law enforcement has done an excellent job and they've been very professional and very thorough. And also they have helped steer the conversation away from any one particular defendant, from any group of defendants, towards the evil of human

trafficking. It's about time the country has a real conversation about human trafficking, which is modern day slavery in our midst. This is not about lonely old men or victimless crimes; this is about enabling a network of criminals to traffic women into our country for forced labor and sex.

**MALE 8:** How did you come up with these 25 people charged? Weren't there a lot more [INDISCERNIBLE] the palor?

**DAVE ARONBERG:** Well, those are the ones charged by the Jupiter Police Department. My jurisdiction's only for Palm Beach County. And by the way, when I talk about human trafficking, I'm talking about the general subject of human trafficking, the larger picture. There is no allegation that any of the defendants were involved with human trafficking; they are not being charged as such. But instead of talking about a particular defendant, I'd like to make the conversation broader because this country needs to have a reality check on what is going on out there when it comes to forced labor and forced sexual conduct.

**FEMALE 6:** When did you first hear about the investigation?

**DAVE ARONBERG:** Our prosecutors have been involved in this for some time; it's hard to pinpoint when—I've been aware of it for a while.

**FEMALE 6:** And what did you think when you first heard that this was happening, you know, in your county?

**DAVE ARONBERG:** I've been involved in fighting human trafficking for a while, so nothing surprises me. I've given a lot of speeches—I'm on the attorney general's statewide taskforce for human trafficking. So when this came across my desk, I was not surprised. I'm not surprised about the defendants. The defendants in these matters come from every social economic group. And it's just a reality of the times we live in.

**FEMALE 7:** What do you think needs to be done on the supply side of this business in order to stop the crime of human trafficking?

**DAVE ARONBERG:** That's a good question, what should be done on the supply side to stop human trafficking? Well, the laws are in place. But I think we need to be better about encouraging victims to speak up, because victims don't know that there are services available to them. They don't know that they could get their criminal records expunged or obtain a special visa to remain in this country. So, if we would treat victims on this matter as victims and not as criminals, I think that you would gain the trust of more individuals to speak up on these matters. Because right now a lot of them come from countries where the police are not their friends. And so they need to know that we're here to help them and treat them as the victims that they are. Terry?

**TERRY:** Palm Beach County has a lot of similar enterprises like [INDISCERNIBLE]. Yet they continue to operate almost, like, in plain sight. What are you and your state attorney's



[INDISCERNIBLE] about human trafficking? Are you telling the police department, "Hey, jurisdiction" you need to look at these places and set up [INDISCERNIBLE]?

**DAVE ARONBERG:** Our human trafficking taskforce works with law enforcement to root out the human trafficking, whether at the store front or on the internet. A lot of it occurs on the internet. Facebook is a very popular site used by human traffickers to recruit and groom and potential victims. So we're working on them on a daily basis. But, you know, there is a high burden of proof. We prosecutors can only file cases that reached a level of burden of proof that we can obtain beyond a reasonable doubt. And so these cases are long in the making, but we hope that sometimes some of them can make a big enough splash to send a message to the rest of the country.

**MALE 9:** Can you talk about what federal agencies you've been working with?

**DAVE ARONBERG:** Our human trafficking taskforce works with the FBI and Department of Homeland Security.

**FEMALE 8:** So far are the victims in this case cooperating?

**DAVE ARONBERG:** Well, that is up to the investigators. They're working with victims on it. I can't say much on the status of that.

**MALE 10:** [INDISCERNIBLE] evidence needed to charge in these cases, specifically Robert Kraft?

**DAVE ARONBERG:** Police can charge based on probable cause. Is it more probable than not that a crime has occurred? Our

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standard is higher. For prosecutors to charge, we have to have a good faith belief that we can get a conviction beyond a reasonable doubt. It's a higher burden, and it's why sometimes we will see that police will charge in some cases and then we will decided not to file charges. And that is why we're having this press conference, because we made the decisions that enough evidence exists to file charges in all 25 of these cases. [INDISCERNIBLE]. Yeah.

**FEMALE 9:** [INDISCERNIBLE] all walks of life. Who would you [INDISCERNIBLE]?

**DAVE ARONBERG:** Yeah. I don't understands how someone can be targeted, that you look at all the defendants in this matter, they come from all walks of life. And there is a rich, poor, there is young and old. So I don't believe anyone was targeted for whom they are. Yes sir, over here.

**MALE 11:** [INDISCERNIBLE] two points, if the women are considered victims, does the video evidence [INDISCERNIBLE] video of the victims were used [INDISCERNIBLE]?

**DAVE ARONBERG:** It shouldn't. The individuals involved, we're working with them. And I can't speak more about it as far as the victims to gain more information. But it should not affect our ability to use video, ultimately if we need to, in court.

**FEMALE 10:** What's the most important think you need right now to lead that high burden of proof?

**DAVE ARONBERG:** Well, video evidence is always very powerful in the court of law. You also have the testimony of some of the victims. I know that in many cases like this, there are language barriers and there are interpreters needed, and there is also a trust factor that must be gained. So we're working on all those things.

**MALE 12:** Can you be more specific about those women and how they got here, what they--?

**DAVE ARONBERG:** How about this, let's take Carey and then I'll take you. I'll get you next, yes, sir.

**CAREY:** Is there any possibility that those who have been charged would somehow plead this away to a lesser charge?

**DAVE ARONBERG:** Well, there are diversion programs available. There are classes available. So just because the mandatory penalty is up to a year in jail doesn't mean someone is going to get that. If it goes to trial, it's up to a judge, and you look at the person's background. First time offenders are very unlikely to get significant jail time. So depending on the plea, depending on the background, depending on the conduct, these are all considerations that come into play.

**CAREY:** But your office is open to a plea of a lesser charge by those who have been charged?

**DAVE ARONBERG:** Well, we don't talk about the status that goes into much detail than I can talk about at this time. Yes, sir.

**MALE 2:** If you can, can you talk a little bit about the women? How they get here [INDISCERNIBLE] of their story to wherever they were to where they are now?

**DAVE ARONBERG:** Yeah, that would be for the Jupiter Police Department. I say in cases like this -- and I talk about it in generalities -- because I can't speak to the specific evidence, I can't talk about where they came from or how we broke this case because that could jeopardize any potential prosecutions. So let's just say that in cases like this, it is not uncommon for women to be lured into this country under false pretenses with the promise of a better life, a high paying job, only to be stuck in squalor in a brothel or a sweatshop, where they're forced to perform labor or sex acts for money.

**FEMALE 11:** Can you verify how this process works for Robert Kraft? You said you determined he is a resident of Palm Beach County, you are issuing him a summons, does that mean he has to appear in court or can he send an attorney to appear in court?

**DAVE ARONBERG:** Yes, so it's a summons, so he does not have to make a public court appearance.

**FEMALE 11:** So, he can send an attorney to appear?

**DAVE ARONBERG:** Correct.

**MALE 13:** And to clarify, did he get one or two charges?

**DAVE ARONBERG:** Two charges, yes sir.

**FEMALE 12:** [INDISCERNIBLE]?

**DAVE ARONBERG:** How important is the cooperation?

**FEMALE 12:** [INDISCERNIBLE]?

**DAVE ARONBERG:** Well, if it goes to trial, their testimony obviously could be helpful, but if there's video evidence, that also is very powerful evidence. But I don't want to talk specifically to the evidence. But in general, video, eye-witness testimony are all important for any trial.

**FEMALE 13:** With Palm Beach County, [INDISCERNIBLE]?

**DAVE ARONBERG:** That was three administrations ago.

**FEMALE 13:** I understand. Do you want to talk about, set the record straight now, how you're handling it, what [INDISCERNIBLE]?

**DAVE ARONBERG:** Yes, well, Florida voters passed into our constitution something called Marsy's Law, which is a victims' bill of rights, so we have already had a training session for all our prosecutors and we are adhering to Marsy's Law. And as someone who campaigned for Marsy's Law, it's really important to all of us; we must let the victims' voices be heard.

**FEMALE 14:** If Mr. Kraft were found guilty and has to [INDISCERNIBLE]?

**DAVE ARONBERG:** Correct, correct-- well, it also depends the court, it depends on the judge and the court, whether they make an arrangement. But that would be largely out of our hands. The judge imposes the sentence. Now, if there is a plea, then we have a lot more to say on it, but this is all speculation

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at this point. It's still early.

**FEMALE 15:** [INDISCERNIBLE]?

**DAVE ARONBERG:** You know, at Al Johnson, I work on Sober Homes Taskforce. And when it came to drug treatment centers, we're often frustrated that the inspections that occurred were just to see if the fire extinguishers were working. So we upgraded the laws to help increase the inspections and demands for what—and maybe that is something that needs to be done here too. Maybe there should be increased scrutiny.

**FEMALE 15:** [INDISCERNIBLE] government worker [INDISCERNIBLE]?

**DAVE ARONBERG:** There are 328 million Americans and there are about 800,000 law enforcement officers. So it's up to all of us to be the eyes and ears to protect against human trafficking. Because a lot of this stuff occurs in plain sight. It's like the nail salon worker who is living in the back room and is not allowed to handle money and is afraid to look at you in the eye. If you see something, say something. And maybe that's the good that can come out of all of this. Maybe we'll have a new understanding of what human trafficking is and what it isn't.

**MALE 1:** If we could have last questions please.

**FEMALE 16:** [INDISCERNIBLE]?

**DAVE ARONBERG:** Well, it meant that there were two different occurrences in which he's being charged.

**FEMALE 16:** [INDISCERNIBLE]?

**DAVE ARONBERG:** It's just what it is that instead of one charge, there are two. There are two counts, and so he faces two separate counts and have to satisfy those counts with a plea and move on from there.

**FEMALE 16:** [INDISCERNIBLE]?

**DAVE ARONBERG:** It could, it could. I'll take one more. All right. Hey thank you all very much.

**MALE 1:** Thank you.

**DAVE ARONBERG:** Thank you.